92-1337

Case No. (1)

Supreme Court, U.S.
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In The Supreme Court Of The United States

October Term 1992

In Re RONALD L. BRANSON,

Petitioner.

PETITION FOR WRIT OF MANDAMUS
TO THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PETITION FOR WRIT OF MANDAMUS

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Dec. 26, 1992
(Resubmitted)

96 pp

QUESTION PRESENTED FOR REVIEW
(Mandamus)

Whether there has been usurpation of power by the District Court in USDC Case No. 87-03003-WDK, by acting in excess of the jurisdiction conferred upon it by federal statute(s) invoked by plaintiff, i.e., failing and refusing to address the ***federal question*** under Title 28 U.S.C. §§1331 and 1343(a)(3).

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TABLE OF CONTENTS

	Page
Question Presented for Review	i
Reference to Official/Unofficial Reports	1
Grounds for Jurisdiction	1
For Writ of Mandamus (Rule 20.3.(a))	1
Title 28 U.S.C. §2403(a) Applicable	2
Constitutional Provisions & Statutes Involved	2
Statement of the Case	2
Argument (Re Usurpation of Power)	9
Conclusion	21
Appendix	

* * *

TABLE OF AUTHORITIES

Cases:	Pages
Allied Chemical Corp. v. Daiflon, Inc. (1980) 449 U.S. 33, 101 S.Ct 188	11
Bankers Life & Casualty Co. v. Holland (1953) 346 U.S. 379	10
Bender v. Williamsport Area School Dist.(1986) 475 U.S. 534, 106 S.Ct 1326	11
Bradley v. Fisher (1872) 80 U.S. (13 Wall.) 335	19
Chapman v. Houston Welfare Rights Org. (1979) 441 U.S. 600	13,14
Chicot County Drainage Dist. v. Baxter State Bank (1940) 308 U.S. 371	14
Crooks v. Maynard (9th Cir.1987) 820 F.2d 329	19
Daniels v. Williams (1986) 474 U.S. 327	15,16,20
DeBeers Consolidated Mines Ltd. v. United States (1945) 325 U.S. 212	9,10
Ex parte United States (1932) 287 U.S. 241, 53 S.Ct. 129	22
Garcia v. County of Los Angeles (CD Cal.1984) 588 F.Supp 700	21
Gully v. First Nat.Bank (1936) 299 U.S. 109, 57 S.Ct 96	12
In re Center Wholesale, Inc. (9th Cir.1985) 759 F.2d 1440	14

Kansas City Southern Ry.Co. v. Great Lakes Carb.(8th Cir.1980) 624 F.2d 822 14

Kerr v. United States District Ct. (1976) 426 U.S. 394, 96 S.Ct 2119 10

Mallard v. United States Dist. Ct. (1989) 490 U.S. 296, 109 S.Ct 1814 11

Margoles v. Johns (7th Cir.1981) 660 F.2d 291 15

McNutt v. General Motors Acceptance Corp. (1936) 298 U.S. 178 11

Monroe v. Pape (1961) 365 U.S. 167, 81 S.Ct 473 20

O'Quinn v. Manuel (1985) 773 F.2d 605 12

Owen v. City of Independence (1980) 445 U.S. 622 20

Roche v. Evaporated Milk Assn (1943) 319 U.S. 21, 63 S.Ct 938, 87 L.Ed 1185 10

Shulthis v. McDougal (1912) 225 U.S. 561 12

Sterling v. Constantin (1932) 287 U.S. 378 21

Turner v. Bank of North America (1799) 4 Dall. 7 12

United States v. Beatty (1914) 232 U.S. 463 10

United States v. Duell (1899) 172 U.S. 576, 19 S.Ct 286, 43 L.Ed 559 11

V.T.A. Inc. v. Airco Inc. (10th Cir. 1979) 597 F.2d 220 15

Will v. Calvert Fire Ins. Co. (1978) 10
437 U.S. 655, 98 S.Ct 2552

Will v. United States (1967) 10
389 U.S.90, 88 S.Ct 269, 19 L.Ed.2d 305

Wood v. Ostrander (9th Cir.1989) 16
879 F.2d 583

U.S. Constitution:
Fourth Amendment 12,15,16,17,18,22
Fifth Amendment 15,17,20
Fourteenth Amendment 12,15,20

Federal Statutes:
28 U.S.C. §1254(1) 9
28 U.S.C. §1331 11,21
28 U.S.C. 1343(a)(3) 11,12,13,21
28 U.S.C. §1651(a) 9
28 U.S.C. §2403(a) 1,21
42 U.S.C. §1983 12,13,15,21

Supreme Court Rules:
Rule 20.3.(a) 10

Federal Rules of Civil Procedure:
Rule 59(e) 21

Moore's Federal Practice:
Vol. 7 2d, § 60.25[2] 14
Vol. 9 2d, §110.27 9
Vol.12 2d, §400.05[3] (1990) 9
Vol.13 2d, §810.27 (1991) 9

Law Review:
Note: "Filling the Void: Judicial Power & Jurisdictional Attacks on Judgments" (1977) 87 Yale L.J. 164 20

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REFERENCE TO OFFICIAL/UNOFFICIAL REPORTS OF OPINIONS

United States Reports
Supreme Court Reporter
Lawyers' Edition Reports, 1st & 2d Series
Federal Reporter, 2d Series

GROUNDS FOR JURISDICTION

(1) The final opinion sought to be reviewed was filed August 6, 1992; rehearing was denied September 28, 1992.

(2) The statutory provision which confers jurisdiction on this Court to review the final opinion in question by writ of certiorari, insofar as the jurisdiction of the Court of Appeals is questioned, is Title 28 U.S.C. §1254(1); (Petition for Writ of Certiorari filed concurrently herewith under separate cover). In addition thereto, Title 28 U.S.C. §1651 confers on this Court further jurisdiction in aid of its appellate jurisdiction to issue a writ of mandamus or common law certiorari regarding the Usurpation of Power question presented in this Petition for Writ of Mandamus. [Texts of statutes in Appendix].

FOR WRIT OF MANDAMUS

Pursuant to USSC Rule 20.3.(a), petitioner states:

(1) Name and title of every person against whom mandamus relief is sought (i.e., the judicial officers involved):

ROBERT M. STONE, U.S. Magistrate, Dist. Ct.
WILLIAM D. KELLER, U.S. District Judge, Dist. Ct.
CYNTHIA HALL, Circuit Judge, Ct. of Apls.
PROCTER HUG, JR., Circuit Judge, Ct. of Apls.
DOROTHY W. NELSON, Circuit Judge, Ct. of Apls.
HARRY PREGERSON, Circuit Judge, Ct. of Apls.
ARTHUR L. ALARCON, Circuit Judge, Ct. of Apls.
CHARLES E. WIGGINS, Circuit Judge, Ct. of Apls.
BETTY B. FLETCHER, Circuit Judge, Ct. of Apls.
DIARMUID O'SCANNLAIN, Circuit Judge, Ct. of Apls.
ANDREW J. KLEINFELD, Circuit Judge, Ct. of Apls.

(2) Relief sought herein is not available in any other court, there are no pending proceedings in any lower court and all other remedy is exhausted.

TITLE 28 USC §2403(a) APPLICABLE

The constitutionality of several Acts of Congress has been drawn into question and therefore Title 28 U.S.C. §2403(a) is applicable; this Petition is served upon the Solicitor General, Department of Justice, Washington D.C. 20530.

The Ninth Circuit Court of Appeals was noticed in writing of the constitutional questions on 6/17/89 in USCA No. 89-55306, on 2/11/91 in USCA No. 91-70099, and on 11/6/91 in USCA No. 91-55819, for the purpose of certifying that fact to the Attorney General, pursuant to FRAP Rule 44.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitutional Provisions:
Fourth Amendment, U.S. Constitution
Fifth Amendment, U.S. Constitution
Fourteenth Amendment, U.S. Constitution
Federal Statutes:
28 U.S.C. § 636(b)(1)
28 U.S.C. §1254(1)
28 U.S.C. §1291
28 U.S.C. §1331
28 U.S.C. §1343(a)(3)
28 U.S.C. §1651(a)
28 U.S.C. §2106
28 U.S.C. §2107
28 U.S.C. §2403(a)
42 U.S.C. §1983
[Pertinent texts are set forth in the Appendix]

STATEMENT OF THE CASE

Petitioner herein is often referred to as "plaintiff".

The following facts are material to the question presented. Since the issues are jurisdictional, discussion of merits is not relevant; merits are not reached. This statement deals primarily with mechanics, involving Rule 59(e) motions and facts involving usurpation of power by the district court and refusal of any court to address that issue.

The nature of USDC Case No. 87-03003-WDK is an action at law to redress deprivations, under color of statute, ordinance, regulation, custom or usage, of rights, privileges, and immunities secured to plaintiff by the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution, pursuant to Title 42 U.S.C. §1983, invoking the court's jurisdiction under Title 28 U.S.C. §1331 (federal-question) and §1343(a)(3) (civil rights violations). The initial complaint was filed 5/8/87, and due to court-claimed ambiguities appearing on the face of the complaint possibly involving Parratt violations, the court ordered plaintiff to amend. In compliance, plaintiff filed a First Amended Complaint (hereinafter "FAC") on 2/16/88 [CR 41] invoking the same jurisdiction.

All defendants answered [CR 45], [CR 48], [CR 72], except SCHWARTZ who moved for dismissal on the sole ground of "judicial immunity" [CR 44]. The magistrate recommended dismissal while expressly declining to rule on the issue of subject-matter jurisdiction of the municipal court (i.e., SCHWARTZ' court) in plaintiff's underlying criminal case and, hence, of defendant SCHWARTZ' authority to act therein [CR 85/p.5 fn.1]. Plaintiff filed Objections [CR 86], the magistrate reaffirmed his recommendation [CR 96] and the judge "adopted" it [CR 95] without evidence shown on the record of a *de novo* determination by the judge of plaintiff's Objections, although a proforma statement that such was done was made as a matter of form on the document. None of the Objections was addressed by the court, particularly regarding subject-matter jurisdiction of SCHWARTZ to act in the case at all, with reference to granting judicial immunity. Plaintiff filed a Rule 59(e) motion to alter or amend the judgment [CR 100]. The judge, rather than hear the 59(e) motion, transferred it "for all proceedings" back to the same magistrate [CR 101] whose decision plaintiff was challenging. Not surprisingly, the magistrate recommended the

motion challenging his own decision be summarily denied without discussion of merits. The judge then "rubber-stamped" that recommendation refusing to address its merits which requested that the judge specifically address plaintiff's previous Objections. This summary denial placed plaintiff back in "Square One" --where he was when he filed the Rule 59(e) motion attacking the decision.

Plaintiff filed an immediate appeal 5/12/89 [USCA No. 89-55306] on the denial of the Rule 59(e) motion. Plaintiff also brought the issue of "judicial immunity" on appeal since the questions were closely related and sufficiently separate from the rest of the case to warrant immediate relief. However, rather than address the ***appealable issue*** for abuse of discretion on the 59(e) motion, the Court of Appeals (hereinafter "C/A") dismissed the entire appeal 8/23/90 based on non-appealability of the judicial-immunity issue. Plaintiff then filed a petition for rehearing 9/5/90, eliminating the judicial-immunity issue, requesting a ruling on the appealable issue re denial of the Rule 59(e) motion. Re-hearing was denied 9/28/90. Again plaintiff was thrown back to "Square One" --the exact same position as when filing the Rule 59(e) motion.

The question of "judicial immunity" then became part of the "usurpation of power" issue, since it avoided the federal question presented. Since 9/13/88 the court, [Mag.Stone in particular], has refused to address the question of the lack of jurisdiction of the municipal court in the underlying criminal proceeding, which requires judicial examination into the ***federal question(s)*** presented.

The Second and Third Judgments are the result of motions for summary judgment for the COUNTY defendants and defendant STRAUCH, respectively, both decisions avoiding the federal question [CR 256, 261] the judge refusing to address that jurisdictional issue raised in plaintiff's Objections [CR 241]. Plaintiff filed a second Rule 59(e) motion [CR 263] with two volumes of supporting exhibits [CR 264, 265] challenging both of those judgments as void due to the court's

failure to address the federal question(s) resulting in the court's usurpation of power. Instead of hearing the motion, the judge took it off calendar and scheduled a status conference for 5/7/90 and ordered that the motion would be rescheduled by the court after the status conference [CR 272]. The motion was never rescheduled, leaving the finality of the Second and Third Judgments forever suspended and nonappealable to this day.

On 9/6/89 plaintiff filed a motion to amend the FAC [CR 150] lodging a proposed Second Amended Complaint ("SAC") to conform to evidence received from discovery since the FAC, which was plaintiff's first request to amend. New names were discovered and facts creating a new Fifth Cause of Action which directly alleges "There was no subject matter jurisdiction to file any misdemeanor complaint against plaintiff with said Municipal Court whatsoever..." [CR 406/59:12-15]. The magistrate thereafter denied the motion 1/5/90 [not on docket]. Plaintiff filed objections 1/22/90 [CR 242] and on 2/22/90 the judge ordered plaintiff [CR 262] to file a declaration attesting his genuine ignorance of the new names under the California standard set in Munoz v. Purdy (a state case).

Without waiving his rights under Rule 15(a) F.R.Cv.P., plaintiff filed a declaration 3/16/90 [CR 266]. On 6/22/90 the judge denied leave to expand or modify claims, without explanation [CR 287]; i.e., the new cause of action could not be alleged. On 7/9/90 plaintiff filed a third Rule 59(e) motion, requesting the court to alter or amend and vacate as void the 6/22 Order [CR 288]. No opposition was filed, and on 7/31/90 the judge took the third motion off calendar and submitted it 8/6/90. [CR 289]. The motion was thereafter ***never decided.***

Nothing more happened until a hearing scheduled for plaintiff's discovery motion was held 12/10/90 at which time the proposed SAC came up. The judge ordered the COUNTY to "file a Status Report re plaintiff's motion to file 2nd Amended Complaint" [CR 304]. On 12/20/90 counsel prepared a "Status Report" addressing the SAC on pp 3-4,

the conclusion of which states "The confusion now lies in whether the court actually denied plaintiff's Motion to Vacate the Court's Ruling." [CR 307]. Plaintiff's discovery motion wasn't addressed.

The resulting 12/10/90 order [CR 304] forced plaintiff to seek extraordinary relief by supervisory mandamus on 2/15/91 [USCA No. 91-70099] which presented the issue of Usurpation of Power, requesting a stay until the case could be "set on track" on the federal jurisdiction invoked. The C/A denied the petition 3/13/91. Plaintiff was then forced to undergo sham proceedings that are fully documented on the record as sham, the court proceeding still outside the scope of federal jurisdiction, avoiding the alleged federal violations following plaintiff's warrantless felony arrest.

Thereafter plaintiff, for lack of a remedy by Writ, appealed the same issues as was brought up before the C/A previously in USCA No. 91-70099.

The threshold issue now is lack of jurisdiction of the C/A under §1291 and Rule 4(a)(1) F.R.A.P. in Case No. 91-55819. Petitioner presented that issue to the C/A in a petition for rehearing (hereinafter "REH"). Rehearing was denied without comment and that issue now comes before this Court in the accompanying Petition for Certiorari.

This Petition for Mandamus brings the issue of Usurpation of Power of the district court involving failure to establish parameters of federal jurisdiction under the statutes invoked, and address the federal subject matter thereby elucidated. The court failed to make judicial inquiries into federal jurisdiction when ruling on the SCHWARTZ dismissal [CR 85], and failed to address the question regarding defendant SCHWARTZ before the court according to the allegations of the FAC. That failure was expressly articulated in footnote 1 on page 5 of the Report/Recommendation filed 9/13/88 [CR 85] stating "To state the obvious for the sake of clarity, the Magistrate makes no determination as to whether or not the municipal court lacked jurisdiction to accept the filing of a misdemeanor complaint against plaintiff, and to

arraign him on it and take related actions." The refusal to make that determination was a refusal to address the subject matter of this federal case (i.e., violation of Fourth and Fifth Amendment substantive due process). From that point (9/13/88), this case has proceeded ***off track***, and plaintiff's Objections [CR 86] and the question of jurisdiction to act have gone unaddressed by the judge as reflected in his Order Adopting Findings [CR 95] and the (first) Judgment [CR 97].

The district court did not follow federal jurisdictional statutes herein invoked [CR 241/15:1-28:13], which has been fatal. Plaintiff stated in his Objections "Unless and until Magistrate Stone makes the necessary judicial inquiry into these jurisdictional facts in this case, he has not established subject-matter jurisdiction of this court as specifically defined and limited by the particular federal statutes involved. Therefore, on that basis alone, any decisions or rulings made by Magistrate Stone, in the absence of formally establishing federal jurisdiction, is void and a nullity." [CR 241/27:5-12]. The same is true of Judge Keller when he refused to reschedule plaintiff's Rule 59(e) motion [CR 263] addressing that problem. Federal jurisdiction has never been formally established by the court within this litigation, the court ignoring plaintiff's documents urging the federal subject matter be addressed.

Since the 9/13/88 buildup of the court refusing to address federal subject matter, pressure finally erupted into an "explosion" at the 12/10/90 proceeding. Scheduled for that day was only plaintiff's Motion to Determine Sufficiency of Responses by Defendant County of Los Angeles to Plaintiff's Second Set of Request for Admissions [CR 295] which the Order of 12/10/90 itself indicates [CR 304]. There was no "trial setting" which was erroneously listed on the Order [CR 304]. Instead of addressing the motion, the judge went berserk, attacking plaintiff, throwing the case terminally into utter chaos. The judge didn't know what was before the court [RT 3:25-4:1] and

made a wrong "guess" [RT 4:2-7], describing matters, to plaintiff's knowledge, never existing [RT 4:8-9]. There was no Joint Status Report prepared for this hearing or anything else on the record that would indicate a "status conference" or "trial setting." Only plaintiff's motion was noticed and set for hearing on 12/10/90 [CR 295].

Everything pending or awaiting rescheduling by the court was abandoned and he proceeded to set the case for a sham trial limited solely to "strip search" and "policy" --everything else thrown out. [CR 304]. On 12/19/90 plaintiff filed a declaration re (1) notice of non-waiver of the other issues, (2) notice of intent to file a writ of mandate, and (3) objections to court proceedings of December 10th and Order of 12/10/90 [CR 305].

This information was presented in the opening brief (hereinafter "OB") p.13 and the C/A failed to address CR 305 whatsoever which consists of plaintiff's objections to the "hearing" relied on by the court [Decision p.7]. Plaintiff objected to all further proceedings as usurpation of the court's authority and jurisdiction and filed a petition for writ of mandate on 2/15/91 requesting a stay of proceedings [Case No. 91-70099] which was denied 3/13/91. Plaintiff was then forced to go through a suddenly set "trial" without notice or rescheduling any of his pending motions, including his Rule 59(e) motions to vacate/alter/amend judgments [CR 263, 272, 288].

By the judge resting this case on his decision of 2/26/90 (Second and Third Judgments), using it as the basis for what he perceives "is left in the lawsuit" [RT 5:2], while ***ignoring*** plaintiff's Rule 59(e) motion challenging the validity of those judgments as ***VOID*** [CR 272], does not change what clearly appears on the record. The record shows that the judge's "perception of what is left in the lawsuit" is patently ***FALSE*** and further proceedings based thereon a sham.

The above facts were presented in the OB and are re-presented to this Court since they were totally ignored by the C/A.

ARGUMENT

There has been a plain usurpation of power by the District Court in Case No. CV 87-03003-WDK.

Plaintiff not only brought this as the second issue for review in USCA Case No. 91-55819, but brought it to the C/A a few months earlier by petition for writ of mandamus (Case 91-70099). Final destruction occurred 3/13/91 when the C/A denied that petition, allowing usurpation of power to take control. Petitioner now brings it to this Court so this case may proceed to finality. "Where the application [for prerogative writ] has been denied by the court of appeals, the Supreme Court may entertain an original application." (9 Moore's Fed. Prac. 2d (1992) §110.27 pp 334-335).

"The [Supreme] Court has granted certiorari to clarify the boundaries of the jurisdiction of a lower federal court.... Some cases do not fit easily into the departure/supervisory category [of Rule 10.1.(a)]; and some do overlap other situations. This should not be detrimental to a petitioner." (13 Moore's Fed.Prac. 2d (1991) §810.27 p.SC 10-37). In addressing the Usurpation of Power issue, petitioner invokes the jurisdiction of this Court under the All Writs Statute (hereinafter "§1651") in addition to §1254(1), in aid of its appellate jurisdiction. "When a court has no judicial power to do what it purports to do --when its action is not mere error but usurpation of power-- the situation falls precisely within the allowable use of §262." [now §1651]. DeBeers Consolidated Mines Ltd. v. United States (1945) 325 U.S. 212, 217, 65 S.Ct. 1130, 1133, 89 L.Ed. 1566.

"A petitioner may seek different writs alternatively or cumulatively." (9 Moore's Fed.Prac. 2d (supra) §110.26 p.282). "Under the All Writs Statute, the Court may grant prerogative writs, such as mandamus ... and the common law writ of certiorari in aid of its appellate jurisdiction where review by appeal, certiorari or certification is not available." (12 Moore's Fed. Prac. 2d (1990) §400.05[3] pp 4-17, 4-18). Petitioner herein seeks relief both by Writ of Certiorari (said petition filed

under separate cover concurrently herewith) to the Ninth Circuit Court of Appeals and by Writ of Mandamus to the United States District Court in aid of appellate jurisdiction as an auxiliary process "as a means of correcting excesses of jurisdiction, of giving full force and effect to existing appellate authority, and of furthering justice in other kindred ways." United States v. Beatty (1914) 232 U.S. 463, 467.

Pursuant to Rule 20.3.(a) petitioner listed the judicial officers involved and hereby states that the relief sought is not available in any other court. Mandamus has already been sought and denied by the Ninth Circuit (No. 91-70099) and that court also refused to address the issue in USCA Case 91-55819; now only this Court remains available to bring this case into the operation of federal-question and civil-rights jurisdiction.

"'The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.' Roche v. Evaporated Milk Assn., 319 U.S. 21, 26, 63 S.Ct. 938, 941, 87 L.Ed. 1185 (1943). See also Will v. Calvert Fire Ins. Co.., 437 U.S. 655, 661, 98 S.Ct. 2552, 2556, 57 L.Ed.2d 504 (1978); Kerr v. United States District Court, 426 U.S. 394, 402, 96 S.Ct. 2119, 2123, 48 L.Ed.2d 725 (1976); Will v. United States, 389 U.S. 90, 95, 88 S.Ct. 269, 273, 19 L.Ed.2d 305 (1967).... Although 'we have not limited the use of mandamus by an unduly narrow and technical understanding of what constitutes a matter of "jurisdiction,"' Kerr (supra), 426 U.S., at 402, 96 S.Ct. at 2124; see Will v. United States (supra) 389 U.S., at 95, 88 S.Ct. at 273, we have required that petitioners demonstrate a 'clear abuse of discretion,' Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 383, 74 S.Ct 145, 148, 98 L.Ed. 106 (1953), or conduct amounting to 'usurpation of [the judicial] power,' DeBeers Consolidated Mines, Ltd. v. United States, 325 U.S. 212, 217, 65 S.Ct. 1130, 1133, 89 L.Ed. 1566

(1945), to be entitled to issuance of the writ. To ensure that mandamus remains an extraordinary remedy, petitioners must show that they lack adequate alternative means to obtain the relief they seek, *see e.g.* Kerr *(supra) 426 U.S., at 403...*; Allied Chemical Corp. v. Daiflon, Inc. 449 U.S. 33, 35, 101 S.Ct. 188, 190, 66 L.Ed.2d 193 (1980) (*per curiam*), and carry 'the burden of showing that [their] right to issuance of the writ is "clear and indisputable."' Bankers Life (supra) 346 U.S. at 384... quoting United States v. Duell, 172 U.S. 576, 582, 19 S.Ct. 286, 287, 43 L.Ed. 559 (1899)." Mallard v. United States District Court (1989) 490 U.S. 296, 109 S.Ct. 1814, 1822, 104 L.Ed.2d 318. In the case at bar, these criteria have been met.

"Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto. (citation)." Bender v. Williamsport Area School Dist. (1986) 475 U.S. 534, 541, 89 L.Ed.2d 501, 106 S.Ct. 1326.

The FAC states on page 2 [CR 41]: "2. The jurisdiction of this court is invoked under Title 28 United States Code, Section 1331 and Section 1343(a), subdivisions (3) and (4)." Section 1331 states "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." (Dec.1,1980). Once plaintiff stated on the face of the complaint the statutory authority for jurisdiction, the magistrate was obligated by law to inquire into the jurisdictional facts of the complaint: "...an inquiry into the existence of jurisdiction is obviously for the purpose of determining whether the facts support his allegations. ...The authority which the statute vests in the court to enforce the limitations of its jurisdiction precludes the idea that jurisdiction may be maintained by mere averment...." McNutt v. General Motors Acceptance Corp. (1936) 298 U.S. 178, 189.

The district court did not have discretion to refuse to exercise the jurisdiction invoked. "[T]he

fair presumption is (not as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather) that a cause is without its jurisdiction, until the contrary appears. This renders it necessary, inasmuch as the proceedings of no court can be deemed valid, further than its jurisdiction appears, or can be presumed, to set forth upon the record of a circuit court the facts or circumstances which give jurisdiction, either expressly, or in such manner as to render them certain by legal intendment." Turner v. Bank of North America (1799) 4 Dall.7,11.

Jurisdiction not only involves power to act, but duty to act. Wherein the former is established, the latter is a duty under due process standards, and failure to act wherein there is a duty is in excess of jurisdiction (usurpation of power). "The complaint invokes section 1983 as well as the first, fourth, and fourteenth amendments to the Constitution; .... Federal law thus provides both the substantive rights and the remedy for violation of those rights." O'Quinn v. Manuel, (1985) 773 F.2d 605, 607. "A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends." Shulthis v. McDougal (1912) 225 U.S. 561, 569; Gully v. First Nat.Bank (1936) 299 U.S. 109, 114, 57 S.Ct. 96.

In the case at bar, the district court failed to exercise federal-question jurisdiction as it is required to do by law. "Jurisdiction cannot rest on any ground that is not affirmatively and distinctly set forth. (citations)" Shulthis p.569.

Plaintiff also invoked the court's jurisdiction under the more specific jurisdictional counterpart for §1983, i.e., Title 28 U.S.C. §1343(a), subdivision (3). "As Senator Edmunds recognized in the 1871 debate: 'All civil suits... which this act authorizes,

are not based upon it; they are based upon the right of the citizen. The act only gives a remedy. Under §1343(3), a civil action must be both "authorized by law and brought to redress the deprivation of rights 'secured by the Constitution of the United States or by any Act of Congress providing for equal rights.'" Section 1983, when properly invoked, satisfies the first requirement: It ensures that the suit will not be dismissed because not 'authorized by law.' But it cannot satisfy the second, since by its terms, as well as its history, it does not provide any rights at all." Chapman v. Houston Welfare Rights Org. (1979) 441 U.S. 600, 617-18. It follows therefore, that if Title 42 §1983 and Title 28 §1343(a) subdivision (3) does not provide plaintiff a remedy, when the Court has jurisdiction to provide that remedy, it is unconstitutional as applied to plaintiff because it denies plaintiff the remedy intended by Congress.

Mag.Stone failed to address the "under color of State law" element necessary to invoke the remedy, in relation to the implementation of State law (criminal proceedings) as a tool ***to violate plaintiff's federal constitutional rights.*** In the Second and Third Rpt & Recom [CR 225, 224], the State actions taken by defendants against plaintiff are addressed only in light of their having ***occurred,*** instead of in light of the ***federal violations*** as a proximate result of those actions having occurred.

The "trial" set up by the judge was based on the ***validity*** of the State proceedings instead of its ***invalidity*** based on the State proceedings ***violating plaintiff's federal rights!*** "Under §1343(3), Congress has created federal jurisdiction of any civil action authorized by law to redress the deprivation under color of state law 'of any right, privilege or immunity secured [1] by the Constitution of the United States or [2] by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.' Claimants correctly point out that the first prepositional phrase can be fairly read to describe rights secured by the Supremacy Clause. For

even though that Clause is not a source of any federal rights, it does 'secure' federal rights by according them priority whenever they come in conflict with state law." Chapman v. Houston Welfare etc. (supra) pp 612-13. In the case at bar, the judge did not accord plaintiff's federal rights priority when they came into conflict with state law. ***State law*** carried the priority.

By not giving priority to plaintiff's ***federal rights*** over state law, the judge extended the court's jurisdiction by judicial fiat over matters beyond the scope of the authority granted to it by statute. The court has acted in excess of jurisdiction since 9/13/88, the date Mag. Stone refused to determine "whether or not the municipal court lacked jurisdiction..." [CR 85/p.5 fn.1], a direct issue within the federal question.

Furthermore as shown by the record, all judgments are void and nullities since they do not reflect that the court established federal subject-matter jurisdiction, nor addressed that subject matter when making its recommendations in all three instances. "If, however, the court's action involves a plain usurpation of power, the court's judgment is void, even though it has the requisite jurisdiction over the parties or res, as the case may be." (7 Moore's Fed. Prac. 2d §60.25[2] pp 60-226, -227). It is this failure of Mag.Stone "to interpret the language of the jurisdictional instrument and its application to" the issues before the court that plaintiff has shown by Objections [CR 241/15:1- 28:13].

"Whatever the contentions as to jurisdiction may be, whether it is that the boundaries of a valid statute itself is invalid, the question of jurisdiction is still one for judicial determination." Chicot County Drainage Dist. v. Baxter State Bank (1940) 308 U.S. 371, 377; 60 S.Ct. 317, 320, 84 L.Ed.2d 329; Kansas City Southern Ry. Co. v. Great Lakes Carbon (8th Cir.1980) 624 F.2d 822, 826. "[A judgment] is void...if the court acted in a manner inconsistent with due process." In re Center Wholesale, Inc. (9th Cir.1985) 759 F.2d 1440, 1448.

"[V]oidness...may also arise if the court's action involves a plain usurpation of power or if the court has acted in a manner inconsistent with due process of law." V.T.A. Inc. v. Airco Inc. (10th Cir.1979) 597 F.2d 220, 224-5; Margoles v. Johns (7th Cir.1981) 660 F.2d 291, 295. Besides extending the court's jurisdiction by judicial fiat beyond the scope of authority granted to it, Mag.Stone acted in a manner inconsistent with due process of law.

"[T]he Due Process Clause of the Fourteenth Amendment... is the source of three different kinds of constitutional protection. First, it incorporates specific protections defined in the Bill of Rights.... Second, it contains a substantive component, sometimes referred to as 'substantive due process,' which bars certain arbitrary government actions 'regardless of the fairness of the procedures used to implement them.'... Third, it is a guarantee of fair procedure...." Daniels v. Williams (1986) 474 U.S. 327, 337. The introduction of the FAC states "...[P]laintiff's complaint involves substantive due process violations of life and liberty under the Fourth and Fifth Amendments of the United States Constitution (i.e., the first two categories of Fourteenth Amendment due process protections as described by J. Stevens in Daniels v. Williams...." [CR 41/2:2-9]. Nevertheless, the court has simply ignored those due process protections.

"If the claim is in the first category (a violation of one of the specific constitutional guarantees of the Bill of Rights), a plaintiff may invoke §1983... [which] was intended to provide a federal remedy for the violation of a federal constitutional right.... Similarly, if the claim is in the second category (a violation of the substantive component of the Due Process Clause), a plaintiff may also invoke §1983... [f]or, in that category, no less than with the provisions of the Bill of Rights, if the Federal Constitution prohibits a State from taking certain actions 'regardless of the fairness of the procedures used to implement them,' the constitutional violation is complete as soon as the prohibited action is taken; the independent federal

remedy is then authorized by... §1983." Daniels v. Williams (supra) pp 337-338; also Wood v. Ostrander (9th Cir.1989) 879 F.2d 583, 589.

In the case at bar, the court has ignored both categories of due process. The court has failed to view the alleged State actions against plaintiff (i.e., the criminal action) as ***prohibited action*** under the Federal Constitution. By failing to do so, the court does not reach the issue of the jurisdiction of the municipal court in plaintiff's underlying criminal case to accept the filing of a misdemeanor complaint against plaintiff and take related actions, in light of the alleged constitutional violations under the Fourth Amendment. By the judge merely "adopting" the magistrate's reports, the resulting judgments fare no better.

As stated, Mag.Stone refused to determine "whether or not the municipal court lacked jurisdiction..." fn.1 btm p.5 Rpt & Recom 9/13/88 [CR 85]. That issue is a ***major*** allegation of the FAC, enhanced in the proposed Second and Third Amended Complaints, and is the most material fact of this case, along with the failure to take plaintiff's felony arrest to a magistrate for a probable cause determination, or to the district attorney for a prosecutorial determination, which resulted in the lack of jurisdiction of that (municipal) court. This issue lies at the heart of the subject matter of this federal case. Stone acknowledged this is indeed alleged on the face of the complaint when he made the inconclusive statement "If the allegations of plaintiff's complaint are assumed to be true, and neither Comm. Schwartz nor any judicial officer of the municipal court had proper jurisdiction to act in the particular circumstances of plaintiff's arrest, it would be totally unreasonable to expect a judicial officer in that position to have 'clearly' been aware of this at the time". [Magistrate's recom 9/13/88]. Without deciding the jurisdictional issue, that statement is meaningless. At no time did Mag.Stone address plaintiff's allegations of total lack of subject matter jurisdiction of the municipal court, the total lack

of subject matter jurisdiction of the commissioner to act whatsoever, the total lack of jurisdiction of the commissioner to issue any kind of "order".

To address that issue, it is necessary to address the subject matter of this federal litigation, namely, the Fourth and Fifth Amendment violations alleged [CR 41/7:1-16:15; CR 406/21:14-43:26]. There was no break in the causal chain of events [CR 41/25:12-14; CR 406/62:21-25; CR 213/5:11-8:27] from the first intrusion at the scene by defendant STRAUCH through and including plaintiff's release from County Jail six days later. There was no oath or affirmation on which probable cause could rest under the Fourth Amendment [CR 406/24:20, 33:22, 45:20-21] and to support the intrusions against plaintiff's person or property; plaintiff's felony arrest was never taken to the district attorney [CR 41/12:7-8; CR 406/32:24-27, 55:21-22, 56:21-22, 57:15-17, 59:6-7, 62:22-24; CR 358/DOLLEY depo p.77:3-11, also CR 406/142:3-11] who alone is vested by California law with the authority to make the initial prosecutorial crime-charging decision on felonies [CR 213/18:18-25, 20:7-10]; plaintiff's felony arrest was unilaterally converted into a misdemeanor complaint by LAPD without plaintiff's knowledge or consent, the police having no authority to usurp the powers of the district attorney [CR 213/17-24; CR 406/32:10-33:1, 55:17-28] under claimed authority by LAPD of Penal Code §17(b)(4) [CR 406/144:18-25 (DOLLEY's resp.to Int.#9), 145:12-21 (DOLLEY's resp.to Int.#27)] which is a plea-bargaining statute [CR 213/23:12-15] for use only by the district attorney, provided the criminal defendant does not object [CR 213/22:16-19]; the misdemeanor complaint created by LAPD [CR 406/p.147 (DOLLEY's resp.to Int.#1&2)]; CR 213/7:17-24; CR 406/32:22-33:1, 55:17-28, 56:13-15] was issued without any knowledge, consent, or authority of the district attorney or knowledge and consent of plaintiff [CR 213/7:25-8:3; CR 406/33:15-19, 56:20-23]; LAPD then filed the bogus misdemeanor complaint as an accusatory pleading with the municipal court [CR 213/8:6-14; CR 406/34:13-17, 58:15-

24] without an order of commitment by any magistrate [CR 406/34:21-23]. Neither plaintiff, nor his felony arrest, was ever brought before a magistrate pursuant to the Fourth Amendment and in compliance with California Penal Code §849(a) [CR 41/11:8-10, 11:26-12:2, 12:20-21, 13:18-19, 21:2-3; CR 406/11:20-22, 25:10-14, 34:21-26, 39:1-3, 41:7-8, 41:18-20, 50:4-6] nor was there ever a magistrate involved at any time [CR 41/5:20, 12:14-16, 26:20-22; CR 406/17:18, 64:12-13; CR 154/17:1-22; CR 213/28:6-20]) nor was there a determination of probable cause made; nor was there ever any intention of so doing [CR 406/32:14-16, 44:19-20, 45:16-18, 47:11-14, 55:7-9, 62:8-10; CR 154/13:26-14:1; CR 154/60:22-24 (STAVROPOULOS depo.p.28:22-24 CR 373); CR 154/62:4-6 (SHANNON depo. p.43:4-6 CR 349)]. Without an appearance before a committing magistrate and an order of commitment signed by that magistrate (i.e., Fourth Amendment process), the municipal court could not have subject-matter jurisdiction to conduct any criminal proceedings against plaintiff. [CR 406/59:12-15, 60:15-18; CR 406/pp 127-139; CR 213/24:9-25:9].

Not one thing was done according to law (i.e., federal substantive due process) throughout the underlying state criminal proceedings. All of those violations are part of the proposed Second Amended Complaint, lodged with the motion to amend filed 9/6/89 [CR 150], and the proposed Third Amended Complaint filed 6/14/91 [CR 406]. The new Fifth Cause of Action establishes by law that the municipal court ***did not acquire*** subject-matter jurisdiction in plaintiff's underlying criminal action. The court ignored the subject matter of STRAUCH's motion for summary judgment [CR 119], i.e., ***plaintiff's criminal conviction in municipal court*** as well as plaintiff's opposition [CR 137] which conclusively shows that the said conviction is void, detailing why and how, according to law, the municipal court ***lacked jurisdiction*** to act in plaintiff's criminal case. [CR 241/90:10-26].

The magistrate cites "Judicial officers have absolute immunity from liability for judicial acts

performed within the jurisdiction of their courts. Bradley v. Fisher, 80 U.S. (13 Wall) 335 (1872)...." [Rpt & Recom 9/13/88, p.3:7-11], however, he refuses to determine jurisdiction of SCHWARTZ' court [Rpt & Recom/p.5 fn.1]. Thus, referring to acts "performed within the jurisdiction of their courts" is meaningless, without which jurisdictional determination, judicial immunity is impossible to determine. He also cites "The doctrine of judicial immunity will not protect a judicial officer with regard to the performance of acts which are not judicial in nature. [citations]." [Rpt & Recom/3:12-16]. However, he fails to determine whether SCHWARTZ had authority to perform any acts of a judicial nature in plaintiff's criminal case.

He cites "The doctrine of judicial immunity is not applicable to a judicial officer when he or she acts in the clear absence of all jurisdiction. Bradley v. Fisher, supra...." As stated, he refuses to determine any jurisdiction, clear or otherwise, in plaintiff's criminal case (LAMC #P604275).

Mag.Stone states "The doctrine of judicial immunity will provide an absolute defense to Commissioner Schwartz if plaintiff's action against her is based on the commission of 'judicial acts' which were not performed in the 'clear absence' of all jurisdiction." [Rpt & Recom/3:26-4:4]. As stated above, any acts to be covered by judicial immunity must be "performed within the jurisdiction of their courts" Bradley v. Fisher, (supra) etc. Obviously there can be no judicial act performed in the total absence of jurisdiction. Crooks v. Maynard (9th Cir.1987) 820 F.2d 329, 332. Mag.Stone states her acts were "undoubtedly judicial" and "plaintiff makes no claim to the contrary" [Rpt & Recom/4:4], which is false. Plaintiff has done so on the face of the FAC [CR 41/15:14-17; 26:19-27:2], enhanced in the proposed Second and Third Amended Complaints.

Mag.Stone next states "The only issue is whether, accepting plaintiff's version of the facts as true, there was such a total absence of jurisdiction for the Commissioner's actions, that it

should have been clear to her that she did not have the legal authority to act as she did." [Rpt & Recom/4:4-8]. Here, Stone creates a new doctrine of ***degrees*** of "total absence of jurisdiction", the lesser degree of "total absence" and the greater degree of "total absence", and classifies hers as the lesser, which must consider her subjective state of mind, rather than law-- a proposition ***never argued*** by SCHWARTZ. "Jurisdiction in any proceeding is conferred by law; that is, jurisdiction is derived from constitutional or statutory provision. Jurisdiction cannot be conferred by...any decision, either implied or direct, that a court may itself make." (16 Cal.Jur.3d (Rev) part I, Courts §55 pp 370-1).

Plaintiff claimed his right ***first*** under his basic liberty interest which is a substantive right protected by the Due Process Clauses of the Fifth and Fourteenth Amendments (Daniels v. Williams (supra)), and ***second*** under the legislative grant of federal jurisdiction and the statutory provision for an exclusive federal remedy authorizing such jurisdiction. "[O]ne cannot determine whether a court has jurisdiction over the subject matter of an action without first determining what is 'the subject matter' of the action." Note, "Filling the Void: Judicial Power and Jurisdictional Attacks on Judgments" (1977) 87 Yale L.J. 164, 200-201.

"By creating an express federal remedy, Congress sought to 'enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.' (Monroe v. Pape 365 U.S. at 172." Owen v. City of Independence (1980) 445 U.S. 622, 650-1.

The federal court has herein focused on the ***legitimacy*** of the state proceedings and used them against plaintiff to ***block*** plaintiff's federal remedy. "...[A] court looks only to whether there has been a deprivation, not what procedures were involved with the deprivation. Once a substantive constitutional right is infringed, no subsequent proce-

dures can erase the violation." Garcia v. County of Los Angeles, (CD Cal.1984) 588 F.Supp 700, 704. "The applicable principle is that where state officials purporting to act under state authority, invade rights secured by the federal Constitution, they are subject to the process of the federal courts in order that the persons injured may have appropriate relief." Sterling v. Constantin (1932) 287 U.S. 378, 393.

This argument was brought by plaintiff in his Objections filed 1/19/90 [CR 241/28:15-39:10]. Plaintiff filed a Rule 59(e) motion on 3/12/90 [CR 263] to get the court to address those Objections. The district court's reaction was to ***abandon*** the motion, and thereby the Objections. The Court of Appeals did the same.

The relief sought by petitioner remains unaddressed. Petitioner requested *inter alia* a ruling on the constitutionality of the following provisions as applied to him in this litigation: (a) Title 42 U.S.C. §1983; (b) Title 28 U.S.C. §1331; (c) Title 28 U.S.C. §1343(a)(3); (d) Title 28 U.S.C. §636(b)(1); and (e) Rule 72(b) F.R.Civ.P. Those provisions relate to the federal jurisdiction to be followed by the district court in this case, and by the court's failure to do so, the Usurpation issue and constitutional challenges arose. All federal courts have an obligation to address those jurisdictional issues which to date they have failed to do. The above challenges of constitutionality still stand. The Solicitor General has been served. (Title 28 U.S.C. §2403(a)).

CONCLUSION

Petitioner resubmits this Petition for Writ of Mandamus to the United States District Court in aid of the appellate jurisdiction of this Court sought in the accompanying Petition for Writ of Certiorari to the Ninth Circuit Court of Appeals (filed concurrently herewith under separate cover) which might otherwise be defeated by the unauthorized action of the court below. (See Ex

parte United States (1932) 287 U.S. 241, 246, 53 S.Ct. 129, 77 L.Ed. 283).

Petitioner respectfully requests that this Court take whatever action is necessary to allow him a federal remedy under §1983 so that the ***federal violations*** may be redressed in this case according to due process of law. Further, petitioner requests that he be reimbursed attorney's fees for being forced, against his will and over his objections, through a sham trial in an attempt to conjure the appearance of finality of this case when indeed there was no finality, and for all costs of review.

One final thought: Isn't it ironic that the Fourth Amendment, the keystone of this federal case, has never been touched by any court to date throughout this litigation? ***THINK ABOUT IT!***

Dated: December 22, 1992
Resubmitted: January 29, 1993

Ronald L Branson

RONALD L. BRANSON,
Plaintiff/Petitioner

APPENDIX

Contents of Appendix

* DECISION OF THE COURT OF APPEALS..... A-2
* ORDERS OF THE TRIAL COURT APPEALED A-8
* ORDER DENYING REHEARING A-13
* NOTICE OF APPEAL A-14
* PETITION FOR WRIT OF MANDAMUS (Cover) . A-17
* ORDER DENYING PETITION FOR MAND. A-18
* MAGISTRATE'S RECOMM. -First Judgment A-19
* PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S RECOMM. RE FIRST JUDGMENT (Face Sheet & Topical Index only) A-24
* FIRST RULE 59(e) MOTION (Motion only) A-27
* REFERRAL OF FIRST RULE 59(e) MOTION TO MAGISTRATE A-29
* ORDER DENYING FIRST RULE 59(e) MOTION ON RECOMMENDATION OF MAGISTRATE ... A-30
* APPEAL TAKEN ON DENIAL OF FIRST RULE 59(e) MOTION (Cover pg) A-32
* MAGISTRATE'S RECOMM. -Second Judgment . A-33
* MAGISTRATE'S RECOMM. -Third Judgment ... A-39
* PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S RECOMM. RE SECOND/THIRD JUDGMENTS (Intro. & Topical Index only) A-42
* SECOND RULE 59(e) MOTION (Motion only) ... A-46
* LAST COURT ORDER -SECOND R59(e) MOTION A-50
* MAGISTRATE'S DENIAL OF MOTION TO FILE SECOND AMENDED COMPLAINT A-51
* PLAINTIFF'S OBJECTION TO MAGISTRATE'S ORDER DENYING MOTION TO FILE SECOND AMENDED COMPLAINT A-53
* JUDGE'S ORDER RE PLAINTIFF'S OBJECTION TO MAGISTRATE'S ORDER DENYING MOTION . A-55
* JUDGE'S ORDER OF 6/22/90 ..... A-59
* THIRD RULE 59(e) MOTION (Motion only) A-61
* LAST COURT ORDER -THIRD R59(e) MOTION . A-64
* PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS & STATUTES A-66

DECISION OF THE NINTH CIRCUIT COURT OF APPEALS

F I L E D
AUG 6 1992
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD L. BRANSON, Plaintiff-Appellant,	) No. 91-55819) D.C. No. CV-87-3003-WDK
v.	)
CITY OF LOS ANGELES; ANTHONY R. STAVROPOULOS, Officer; PATRICK SHANNON, Officer; ROGER FERGUSON, Sgt.; JOSEPH MORGAN, Sgt.; LARRY R. DOLLEY, Det.; COUNTY OF LOS ANGELES; SHERMAN T. BLOCK, Sheriff; JAMES PEREZ; PATRICIA G. SCHWARTZ; CRAIG J. STRAUCH, Defendants-Appellees.	) MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
William D. Keller, District Judge, Presiding

Submitted July 10, 1992**
Pasadena, California

Before: FLETCHER, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

On May 11, 1986, Branson was arrested for attempted burglary of a motor vehicle. He was ultimately charged with two misdemeanors, driving without a license and tampering with a motor

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a) and 9th Cir.R. 34-4.

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vehicle. May 8, 1987, Branson commenced this action pursuant to 42 U.S.C. § 1983, suing nearly every person he came into contact with during the state proceedings. In his First Amended Complaint, he raised five causes of action: false arrest, illegal search, excessive force, false imprisonment, and substantive due process. Several of these causes of action went to trial, and the jury found for the defendants.

Branson challenges the jurisdiction of both the state and federal courts. He also appeals several of the district court's pretrial rulings: (1) dismissal of Branson's complaint against Commissioner Schwartz with prejudice based on her judicial immunity; (2) denial of Branson's motion for leave to add new causes of action to his complaint or expand existing ones; and (3) determination that Branson had failed to properly seek review of several of his discovery requests, and denial of his discovery sanctions against the defendants. Finally, Branson objects to three of the district court's determinations on procedural grounds: (1) dismissal of defendant Schwartz; (2) denial of Branson's summary judgment motion against defendants Perez and Block, summary judgment for Perez, and denial of defendants County of Los Angeles and Block's summary judgment; and (3) summary judgment for defendant Strauch.

Branson frivolously claims that the federal district court in which he chose to file his §1983 lawsuit lacked jurisdiction. He argues, incorrectly, that the procedures the district court

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employed were improper, but this argument, even were it correct, would not establish any defect in jurisdiction.

Branson also makes a jurisdictional attack on the state proceedings. Although Branson was originally arrested for a felony, he was ultimately charged with only two misdemeanors. Commissioners of municipal courts may conduct arraignments for misdemeanors. Cal. Govt. Code § 72190.1. Therefore, Commissioner Schwartz was empowered to conduct Branson's arraignment.

Branson argues that because he was originally arrested for a felony, he must be prosecuted by a district attorney. A county attorney, authorized only to prosecute misdemeanors, handled his case. See Cal. Govt. Code § 72193. The key fact, however, is that Branson was only prosecuted for misdemeanors. Branson argues that only a district attorney could lower his charge from a felony to a misdemeanor. See Cal. Penal Code § 17(4) (defendant has the right to object to charges being defined as misdemeanors). This putative error, however, has nothing to do with the jurisdiction of the municipal court.

Branson also argues that the district court erroneously dismissed his complaint against Commissioner Schwartz on the grounds of judicial immunity because her actions were in excess of the municipal court's jurisdiction. As explained above, the municipal court had jurisdiction over Branson. Even if it did not, the Commissioner would have judicial immunity. Branson does

not allege that Schwartz' actions were not judicial in nature, and we have held: "A judge is immune from suit under 42 U.S.C. § 1983 for acts in excess of his jurisdiction, so long as the acts themselves were judicial." Rosenthal v. Justices of the S. Ct. of Cal., 910 F.2d 561, 565-66 (9th Cir. 1990), cert. denied, 111 S. Ct. 963 (1991). Only when a judicial act is made in "clear absence of all jurisdiction" is judicial immunity absent. Stump v. Sparkman, 435 U.S. 349, 357 (1978).

Branson objects to the district court's denial of leave to amend his complaint. His proposed Second Amended Complaint contains a new cause of action entitled "False Charging, Issuing, and Filing of Misdemeanor Complaint." The district court permitted Branson to add names to existing causes of action, but did not permit him to allege this entirely new cause of action. The denial of leave to amend is within the district court's discretion. Ashelman v. Pope, 793 F.2d 1072, 1078 (9th Cir. 1986) (en banc). This court has commented:

> Five factors are frequently used to assess the propriety of a motion for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether plaintiff has previously amended his complaint.

Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir. 1990). As in Allen, the final two factors here are sufficient alone to uphold the district court's exercise of discretion. Branson had already amended his complaint, and even more importantly, Branson's new fifth cause of action does nothing more than expand his Complaint filed three years previously and his First Amended

Complaint filed some year and a half earlier. The district court did not abuse its discretion in denying leave to amend.

The district court referred several matters including Schwartz' motion for dismissal and the parties' summary judgment motions to a United States Magistrate Judge for review and recommendation. Branson claims that the district court failed to review the magistrate's findings de novo as required by 28 U.S.C. § 636(b)(1). The district court, however, stated that it had "made a de novo determination of those portions of the report to which objections have been made." Branson's argument is without factual support in the record. Mathews v. Weber, 423 U.S. 261, 274 (1976) ("We categorically reject the suggestion that

judges will accept, uncritically, recommendations of magistrates.").

Branson argues that the district court erred in its interpretation of Local Rule 7.15.2. This rule establishes the procedures by which the attorneys for both parties should set out a joint stipulation of the remaining discovery issues for the court's review. 1/ Branson claims that the defendants did not cooperate with him in creating this stipulation, but the district

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1/ 7.15.2 **Moving Papers.** If counsel are unable to settle their differences, they shall formulate a written stipulation specifying separately and with particularity each issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue. The stipulation must be set forth in one document which shall contain all such issues in dispute and the contentions and points and authorities of each party. The stipulation shall not refer the Court to other documents in the file.

court penalized him for failing to comply with Rule 7.15.2 because he did not present all the appropriate documents in his motion for sanctions. He argues that it was the defendants who failed to comply with the rule, and they should be sanctioned pursuant to Local Rule 7.15.4. 2/

While Branson may be correct that the defendants failed to cooperate in creating a Local Rule 7.15.2 stipulation, the district court's response was not an abuse of discretion. It considered that the defendants might not have been cooperative, but stated that Branson could have at least supplied the magistrate with the interrogatories that the defendants had failed to answer. The district court did not abuse its discretion by not sanctioning the defendants for this infraction. Nor did the district court penalize Branson for failing to file the interrogatories along with his motion. The court informed Branson that

he could make his motion again with the attached papers. Further, in a later response to Branson's motion for clarification of the ruling, the district court stated that if the defendants continued to fail to cooperate, Branson should file a "declaration of non-cooperation as well as a document containing Plaintiff's contentions and points and authorities, and sanctions against such

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2/ 7.15.4 **Cooperation of Counsel---Sanctions.** The failure of any counsel to cooperate in such procedures and attend the meeting of counsel, or provide the moving party the information necessary to prepare the stipulation required by Local Rule 7.15.2 within seven (7) days of the meeting of counsel provided in Local Rule 7.15.1, shall result in the imposition of sanctions, including but not limited to the sanctions provided in Local Rule 27 and F.R.Civ.P. 37.

defendant will in all likelihood be granted." These two orders informed Branson exactly how he could receive judicial review of his discovery requests. There was no abuse of discretion. The district court appears to have taken considerable care to avoid any unfair prejudice to such rights as this apparently vexatious litigant might arguably have had.

Branson's brief tangentially refers to several other arguments, all of which are without merit. Branson's repeated claim that the district court failed to rule on his motions for reconsideration is simply incorrect. The court orally rejected these motions at the December 10, 1990 hearing. Branson's assertion that the Magistrates Act, 42 U.S.C. § 1983, and 28 U.S.C. §§ 1331 and 1343 are unconstitutional as applied to him is frivolous.

AFFIRMED.

ORDERS OF THE TRIAL COURT BEING APPEALED

(First Judgment)

ENTERED
CLERK, U.S. DISTRICT COURT
OCT 31 1988
CENTRAL DISTRICT OF CA
BY DEPUTY

JS-6
F I L E D
OCT 28 1988
CLERK, U.S. DIST. CT.
CENTRAL DISTRICT OF CA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON, Plaintiff, v. CITY OF LOS ANGELES, et al., Defendants.

NO. CV 87-3003-WDK(S)

JUDGMENT

Pursuant to the order of the Court adopting the findings, conclusions and recommendations of the United States Magistrate,

IT IS ORDERED AND ADJUDGED that the complaint is dismissed with prejudice as to Commissioner Patricia G. Schwartz.

The Court declines to certify this judgment for review pursuant to F.R.P.C. [sic] §54(b)

Dated: October 26, 1988.

/s/
WILLIAM D. KELLER
United States District Judge

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

(Second Judgment)

L O D G E D
JAN 4 1990
CLERK, U.S. DISTRICT CT.
CENTRAL DISTRICT OF CA
BY DEPUTY

Enter Only
F I L E D
JAN 30 1990
CLERK, U.S. DIST. CT.
CENTRAL DISTRICT OF CA
BY DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
FEB 26 1990
CENTRAL DISTRICT OF CA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No. CV 87-3003-WDK(S)
Plaintiff,)
v.)
CITY OF LOS ANGELES) SECOND JUDGMENT
et al.,)
Defendants.)
_____)

Pursuant to the order of the Court adopting the findings, conclusions and recommendations of the United States Magistrate,

IT IS ORDERED: (1) that summary judgment be entered in favor of Defendant James Perez; (2) that Plaintiff's motion for partial summary judgment against Defendants County of Los Angeles, Sheriff Sherman Block and Deputy James Perez be denied; (3) that the summary judgment motion of Defendants County of Los Angeles and Sherman Block be denied; (4) that a genuine issue of material fact exists as to whether or not the visual body-cavity searches of Plaintiff were made pursuant to County policy and/or the direction or policy of Defendant Block; and (5) that the

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

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following described facts are without substantial controversy pursuant to Rule 56(d) of the Federal Rules of Civil Procedure: except for the issue of body-cavity searches as described above, the acts and/or omissions of which Plaintiff complains were not the direct and proximate result of the official act, policy, practice or usage of Defendant County or of Defendant Block, and they were not sanctioned by said Defendants or either of them.
Dated: 1/30/90

/s/_____
WILLIAM D. KELLER
United States District Judge

----------2----------

(Third Judgment)

LODGED
JAN 4 1990
CLERK, U.S.DISTRICT COURT
CENTRAL DIST. OF CA
BY DEPUTY

Enter Only
F I L E D
JAN 30 1990
CLERK, U.S.DIST. CT
CENTRAL DIST. OF CA
BY DEPUTY

ENTERED
CLERK, U.S.DIST. CT
FEB 26 1990
CENTRAL DIST. OF CA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No. CV 87-3003-WDK(S)
Plaintiff,)
v.) THIRD JUDGMENT
CITY OF LOS ANGELES)
et al.,)
Defendants.)
_____)

Pursuant to the order of the Court adopting the findings, conclusions and recommendations of the United States magistrate,

IT IS ORDERED that summary judgment be entered in favor of Defendant Strauch and that Plaintiff's motion for partial summary judgment be denied.

Dated: 1/30/90

/s/_____
WILLIAM D. KELLER
United States District Judge

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FCRP, RULE 77(d)

(Fourth Judgment)
[*Sham Trial as Shown By Record*]

JS-6

ENTERED
CLERK, U.S.DISTRICT COURT
JUN 18 1991
CENTRAL DIST. OF CA
BY DEPUTY

F I L E D
JUN 14 1991
CLERK,U.S.DIST. CT.
CENTRAL DIST. OF CA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON
Plaintiff

vs

CITY OF LOS ANGELES, et al
Defendant

CASE NO. CV 87-3003-WDK

JUDGMENT ON THE VERDICT
(For Defendant)

This cause having been tried by a Jury, before the Honorable WILLIAM D. KELLER, Judge presiding, and the issues having been duly tried and the Jury having duly rendered its verdict; now therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff(s)

RONALD BRANSON

take nothing on the complaint against the defendant(s)

City of Los Angeles, County of Los Angeles, Officer Anthony R. Stavropoulos, Officer Patrick Shannon, Sgt. Joseph Morgan and Detective Larry Dolley

CLERK
UNITED STATES DISTRICT COURT

Dated: June 14, 1991

By /s/ Sara Tse
Deputy Clerk

JUDGMENT ON THE VERDICT
CV-44 (3/87) (FOR DEFENDANT)

ORDER DENYING REHEARING

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

F I L E D
SEP 28, 1992
CATHY CATTERSON,CLERK
U.S.COURT OF APPEALS

RONALD L. BRANSON Plaintiff-Appellant, v. CITY OF LOS ANGELES; ANTHONY R. STAVROPOULOS, Officer; PATRICK SHANNON, Officer; ROGER FERGUSON Sgt.; JOSEPH MORGAN, Sgt.; LARRY R. DOLLEY, Det.; COUNTY OF LOS ANGELES; SHERMAN T. BLOCK, Sheriff; JAMES PEREZ; PATRICIA G. SCHWARTZ; CRAIG J. STRAUCH, Defendants-Appellees	)	No. 91-55819 D.C. No.CV-87-3003-WDK ORDER

Before: FLETCHER, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

Appellant's petition for rehearing is DENIED.

NOTICE OF APPEAL
(UCSA No. 91-55819)

Name/Address of Attorney
or Pro Per
RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
Telephone (818)446-8356
Leave message with
Robert Brown

F I L E D
JUL 10 1991
CLERK,U.S.DISTRICT COURT
CENTRAL DIST. OF CALIF
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON
Plaintiff,

vs.

CITY OF LOS ANGELES, et al
Defendant.
(See attached for full
list of defendants)

Case Number
CV 87-03003-WDK

NOTICE OF APPEAL

Notice is hereby given that RONALD L. BRANSON
Name of Appellant
hereby appeals to the United States Court of Appeals for the Ninth Circuit from

CRIMINAL MATTER	CIVIL MATTER
[ ]Conviction only (F.R.Cr.P.32(b))	[ ]Order (specify) _____
[ ]Conviction and Sentence	_____
[ ]Sentence only (18 U.S.C. 3742)	
[ ]Order (specify) _____ _____	[x]Judgment (specify) (1)Judgment (2)Second Judgment (3)Third Judgment (4)Judgment on the Verdict
[ ]Sentence Imposed:____ _____	
[ ]Bail Status:_____ _____	[ ]Other (specify) _____

Entered in this action on
(1) Oct.31,1988 (2) Feb.26,1990 (3) Feb.26,1990 (4) Jun.18,1991
Date Judgment or Order Entered on the Docket Sheet

A copy of said judgment or order is attached hereto.

DATED July 10, 1991 /s/RONALD L. BRANSON
Signature of Appellant
or Appellant's Attorney

NOTE: Pursuant to Local Rule 17, the Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of Rule 3(d), F.R.App.

(SEE ATTACHED)

A-2 (04/89) NOTICE OF APPEAL

NOTICE OF APPEAL
(continued)

NAMES OF ALL DEFENDANTS	COUNSEL OF RECORD
CITY OF LOS ANGELES OFFICER ANTHONY R. STAVROPOULOS OFFICER PATRICK SHANNON SGT. ROGER FERGUSON SGT. JOSEPH MORGAN DET. LARRY R. DOLLEY	James K. Hahn L.A. City Attorney 1700 City Hall East 200 No. Main St. Los Angeles CA 90012 Attn:CARMEN HAWKINS
COUNTY OF LOS ANGELES SHERMAN BLOCK JAMES PEREZ PATRICIA G. SCHWARTZ	Morris, Polich & Purdy Attorneys at Law 801 S. Grand, 17th Fl. Los Angeles CA 90017 Attn: ZAHAVA STROUD
CRAIG J. STRAUCH	Dan Lundgren Calif. Attorney Gen. 3580 Wilshire, 8th Fl. Los Angeles CA 90010 Attn: CATHERINE P. BERNSTEIN

7/10/91 RB

PETITION FOR WRIT OF MANDAMUS
(Cover Page)
USCA No. 91-70099

F I L E D
FEB 15 1991
CATHY CATTERSON,CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case No. 91-70099

RONALD L. BRANSON, Petitioner
vs.
UNITED STATES DISTRICT COURT, Respondent

CITY OF LOS ANGELES; COUNTY OF LOS ANGELES; OFFICER ANTHONY R. STAVROPOULOS; OFFICER PATRICK SHANNON; SGT. R.W. FERGUSON; SGT. JOSEPH MORGAN; DET. LARRY R. DOLLEY; CRAIG J. STRAUCH, an individual; SHERMAN BLOCK, Los Angeles County Sheriff; JAMES PEREZ, Deputy Sheriff; and PATRICIA G. SCHWARTZ, Commissioner of the Los Angeles Municipal Court,

Real Parties In Interest

PETITION FOR WRIT OF MANDAMUS

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
(No phone)
Petitioner

SUBMITTED
February 11, 1991

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

F I L E D
MAR 13 1991
CLERK,U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD L. BRANSON, Petitioner, vs. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, Respondent, and CITY OF LOS ANGELES, et al., Real Parties In Interest.	No. 91-70099 DC# CV-87-3003-WDK Central California ORDER

Before: PREGERSON, ALARCON and WIGGINS,
Circuit Judges

The petition for writ of mandamus is denied. Petitioner's motion for stay of proceedings pending disposition of the petition is denied as moot.

MoCal 3/11/91
1

MAGISTRATE'S RECOMM. RE FIRST JUDGMENT
[Adopted by Judge in its entirety despite plaintiff's Objections]

F I L E D
SEP 13 1988
CLERK,U.S.DIST.COURT
CENTRAL DIST.OF CALIF

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No.
) CV 87-3003-WDK(S)
Plaintiff,)
) REPORT AND RECOMMENDATION
v.) OF UNITED STATES
) MAGISTRATE IN A
CITY OF LOS) CIVIL RIGHTS CASE
ANGELES, et al.,)
)
Defendants.)
)

This Report and Recommendation is submitted to the Honorable William D. Keller, United States District Judge, pursuant to the provisions of 28 U.S.C. section 636(b)(1)(B) and General Order 194 of the United States District Court for the Central District of California.

BACKGROUND

On February 16, 1988, Plaintiff filed a First Amended Complaint for damages under 42 U.S.C. section 1983. Several defendants were named, including Patricia G. Schwartz, Commissioner of the los Angeles Municipal Court. The allegations of the First Amended Complaint concerning Commissioner Schwartz

---

are summarized as follows:

1. On May 11, 1986, Plaintiff was placed under arrest by Los Angeles police officers for

the alleged commission of a felony.

2. On or about May 14, 1986, Patricia G. Schwartz, as a Commissioner for the Los Angeles Municipal Court, not being a magistrate and without jurisdiction to act, issued an order remanding Plaintiff to custody.

3. On or about May 16, 1986, Patricia G. Schwartz, who was a Commissioner and not a magistrate, and who had no jurisdiction to act in Plaintiff's case, arraigned Plaintiff on a misdemeanor complaint which was filed without jurisdiction to do so on May 14, 1986.

Defendant Patricia G. Schwartz has filed a motion to dismiss Plaintiff's Amended Complaint as to said Defendant. The sole ground for the motion is that all relevant acts committed by Patricia G. Schwartz were protected by the doctrine of judicial immunity.

Plaintiff has filed a motion for partial summary judgment against Commissioner Schwartz on the issue of liability. In his moving papers, as well as in his responsive papers to the motion to dismiss filed by Commissioner Schwartz, Plaintiff takes the position that he should have been taken before a magistrate for a determination of probable cause in connection with his felony arrest. Plaintiff argues that since this was not done, the filing of a misdemeanor complaint against him was "without jurisdiction" as were all proceedings which took place before Commissioner Schwartz. Therefore, Plaintiff maintains, since

----------2----------

Commissioner Schwartz acted in the complete absence of jurisdiction over plaintiff's case, she is not entitled to rely on the doctrine of judicial immunity.

DISCUSSION

Applicable Legal Principles

1. Judicial officers have absolute immunity from liability for judicial acts performed within the jurisdiction of their courts. Bradley v. Fisher, 80

U.S. (13 Wall) 335 (1872); Schucker v. Rockwood, 846 F.2d 1202 (9th Cir.1988); Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir.1986)(en banc).

2. The doctrine of judicial immunity will not protect a judicial officer with regard to the performance of acts which are not judicial in nature. Forrester v. White, ___ U.S. ___, 108 S.Ct. 538 (1988); Stump v. Sparkman, 435 U.S. 349, 360 (1978).

3. The doctrine of judicial immunity is not applicable to a judicial officer when he or she acts in the clear absence of all jurisdiction. Bradley v. Fisher, supra; Schucker v. Rockwood, supra; Ashelman v. Pope, supra. However, even the erroneous exercise of judicial power in excess of the court's true jurisdiction will be protected by the judicial immunity doctrine, so long as the particular judicial act was not done "in the clear absence" of jurisdiction. Ibid.

Conclusion

The doctrine of judicial immunity will provide an absolute defense to Commissioner Schwartz if Plaintiff's action against her is based on the commission of "judicial acts" which

----------3----------

were not performed in the "clear absence" of all jurisdiction. The acts performed by this defendant in connection with Plaintiff's municipal court arraignment were undoubtedly judicial in nature; Plaintiff makes no claim to the contrary. The only issue is whether, accepting Plaintiff's version of the facts as true, there was such a total absence of jurisdiction for the Commissioner's actions, that it should have been clear to her that she did not have the legal authority to act as she did.

In Bradley v. Fisher, supra, the Supreme Court of the United States gave the following example to demonstrate the proper application of the rule with which we are presently concerned:

> Thus, if a probate court, invested only with authority over wills and the settlement of estates of deceased persons, should

> proceed to try parties for public offenses, jurisdiction over the subject of offenses being entirely wanting in the court, and this being necessarily known to its judge, his commission would afford no protection to him in the exercise of the usurped authority. But if on the other hand a judge of a criminal court, invested with general criminal jurisdiction over offenses committed within a certain district, should hold a particular act to be a public offense which is not by the law made an offense, and proceed to the arrest and trial of a party charged with such act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction, no personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held by him, for these are particulars for his judicial consideration, whenever his general jurisdiction over the subject-matter is invoked. 80 U.S. at 352.

With the above example in mind, the Magistrate must

conclude that Commissioner Schwartz is entitled to the protection of judicial immunity for the acts complained of in Plaintiff's complaint. If the allegations of Plaintiff's complaint are assumed to be true, and neither Commissioner Schwartz nor any judicial officer of the municipal court had proper jurisdiction to act in the particular circumstances of Plaintiff's arrest, it would be totally unreasonable to expect a judicial officer in that position to have "clearly" been aware of this at the time. 1/ Therefore, the motion of Commissioner Schwartz to dismiss the complaint should be granted, and Plaintiff's motion for

partial summary judgment against Commissioner Schwartz should be denied.

RECOMMENDATION

It is therefore recommended that an Order be issued by the Court (1) approving and adopting this Report and Recommendation as the findings of fact and conclusions of law herein; (2) directing that Judgment be entered dismissing the complaint as to Commissioner Patricia G. Schwartz, with prejudice; and (3) denying Plaintiff's motion for partial summary judgment against Defendant Schwartz.

Dated: September 13, 1988

/s/
ROBERT M. STONE
United States Magistrate

1/ To state the obvious for the sake of clarity, the Magistrate makes no determination as to whether or not the municipal court lacked jurisdiction to accept the filing of a misdemeanor complaint against Plaintiff, and to arraign him on it and take related actions.

PLAINTIFF'S OBJECTIONS TO
MAGISTRATE'S RECOMM. RE FIRST JUDGMENT
(Face Sheet and Topical Index only)

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

Plaintiff, Pro Se

F I L E D
CLERK,U.S.DIST.COURT
SEP 28 1988
CENTRAL DIST.OF CALIF

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Case No.
) CV 87-03003-WDK(S)
Plaintiff,)
) PLAINTIFF'S OBJECTIONS
) TO REPORT AND RECOMMEN-
v.) DATION OF MAGISTRATE
) ROBERT M. STONE; AND
) REQUEST FOR CERTIFICATION
CITY OF LOS) UNDER RULE 54(b) IN THE
ANGELES, et al.,) EVENT JUDGMENT IS UPHELD.
) [F.R.Cv.P. Rules 72(b);
Defendants.) 54(b)]; [28 U.S.C.
) §636(b)(1)(C); 28 U.S.C.
_____) §1292(b)]

Plaintiff RONALD L. BRANSON hereby objects to the Report and Recommendation of U.S. Magistrate ROBERT M. STONE filed September 13, 1988, and served upon plaintiff by mail on September 14, 1988, pursuant to Rule 72(b) of the Federal Rules of Civil Procedure and Title 28 U.S.C. §636(b)(1)(C).

Plaintiff also requests that in the event the judgment is upheld, that the court certify the judgment for appeal under Rule 54(b) of the Federal Rules of Civil Procedure and/or pursuant to Title 28 U.S.C. §1292(b) because of the importance of the issue decided and the impact it has on the entire case.

----------1----------

TOPICAL INDEX

		Page(s)
1.	Plaintiff is entitled to a de novo review by District Judge Keller, of the Magistrate's disposition of this dispositive motion.	2
2.	The Bradley v. Fisher excerpt. cited and relied on by Magistrate Stone, is not applicable to plaintiff's case.	3
3.	Magistrate Stone ignored the duty placed upon defendant Schwartz to determine the manner and extent in which the jurisdiction shall be exercised, before she took action.	6
4.	Magistrate Stone failed to consider the limited nature of municipal court jurisdiction requiring an affirmative showing on the record that it acquired jurisdiction over the subject-matter in plaintiff's criminal case.	13
5.	Magistrate Stone failed to decide the issue of subject-matter jurisdiction, one of the required tests for determining the availability of "judicial immunity."	14

TOPICAL INDEX (continued)

		Page(s)
6.	Magistrate Stone faied to address the violation of California Penal Code Section 849(a), which is a necessary step in resolving the jurisdictional requirement for judicial immunity determination.	20

7. Magistrate Stone failed to make the "judicial act" determination in conjunction with the "subject-matter jurisdiction" determination in deciding the availability of judicial immunity. 23

8. Magistrate Stone failed to rule upon the subject-matter jurisdiction for defendant Schwartz to order plaintiff to be falsely imprisoned contrary to law and without due process under the Fourth Amendment. 28

9. Magistrate Stone failed to act on plaintiff's motion to compel defendant Schwartz to comply with Local Rule 7.14.2 before recommending the denial of plaintiff's motion for partial summary judgment against said defendant. 29

10. Magistrate Stone failed to allow plaintiff to complete discovery with defendant Schwartz before recommending the dismissal with prejudice of plaintiff's complaint as to said defendant. 30

Conclusion 32

TOPICAL INDEX (continued)

	Page(s)
EXHIBIT A	35
EXHIBIT B	36-39
EXHIBIT C	40-42
EXHIBIT D	43-44
EXHIBIT E	45-47
EXHIBIT F	48-57
EXHIBIT G	58
EXHIBIT H	59-60

* * *

THE FIRST RULE 59(e) MOTION (Notice/Motion only)
(Challenging the First Judgment)

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

F I L E D
CLERK,U.S.DIST.COURT
NOV 10 1988
CENTRAL DIST. OF CALIF

Plaintiff, Pro Se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON) No. CV 87-03003-WDK(S)
)
) NOTICE OF MOTION AND MOTION
Plaintiff,) TO ALTER OR AMEND JUDGMENT
) AND TO VACATE AND SET ASIDE
) ORDER ADOPTING FINDINGS,
) CONCLUSIONS AND RECOMMEND-
) ATIONS OF UNITED STATES
v.) MAGISTRATE IN A CIVIL RIGHTS
) CASE; MEMORANDUM OF POINTS
) AND AUTHORITIES AND DECLA-
CITY OF LOS) RATION IN SUPPORT THEREOF
ANGELES, et al.,) [Rule 59(e) F.R.Cv.P.]
)
) Date: Dec. 5, 1988
Defendants.) Time: 3:00 p.m.
) Place: Room 1600
_____)

TO THE HONORABLE WILLIAM D. KELLER,
UNITED STATES DISTRICT JUDGE:

PLEASE TAKE NOTICE that on December 5, 1988, at 3:00 p.m. or as soon thereafter as the matter can be heard in the courtroom of U.S. District Judge WILLIAM D. KELLER, located in Courtroom 1600 of the United States Courthouse, 312 North Spring Street, Los Angeles, California, plaintiff will move the court for an order altering or amending its Judgment in

----------1----------

this action filed October 28, 1988, and entered October 31, 1988, and vacating and setting aside its accompanying Order Adopting Findings, Conclusions and Recommendations of United States Magistrate in a Civil Rights Case, filed and entered the same dates, respectively, as the Judgment, on the following grounds:

1. There is no indication in the Judgment or related documents that the District Judge in fact conducted a de novo determination as required by law by making a thorough analysis of the record and report in light of plaintiff's objections before adopting the Magistrate's recommendations, thereby allowing room for suspicion that the Magistrate's Report became a de facto Magistrate's adjudication of this dispositive matter, in violation of the Federal Magistrate's Act;

2. The Judgment is based on the adopted findings, conclusions and recommendations of the Magistrate which consists of erroneous findings and errors and omissions of law, and must be corrected.

This motion is based on this notice, the memorandum of points and authorities and declaration attached hereto, on the attached exhibits, and on the pleadings, papers, records and files herein, together with such other evidence, both oral and documentary, as may be presented at the hearing on this motion.

Dated: November 9, 1988

/s/
RONALD L. BRANSON
Plaintiff, Pro Se

---2---

REFERRAL OF FIRST RULE 59(e) MOTION TO MAGISTRATE

UNITED STATES GOVERNMENT
MEMORANDUM

Date: November 28, 1988
Reply to Attn of: Sara Wong,
CRD to Judge WILLIAM D. KELLER
Subject: REFERRAL TO MAGISTRATE
To: Liz Padilla, CRD to Magistrate STONE

F I L E D
NOV 28 1988
CLERK,U.S.DIST.COURT
CENTRAL DIST. OF CALIF.

Case No. CV 87-3003-WDK(S)
Title: RONALD L. BRANSON
vs.
CITY OF LOS ANGELES, et al

Pursuant to the Judge's directive, the following matter: Plaintiff's motion to alter or amend judgment and to vacate and set aside order adopting findings, conclusions and recommendations of United States Magistrate in a civil rights case
Filed on November 10, 1988 to be heard on December 5, 1988 is referred to the magistrate for all proceedings.

Counsel for plaintiff
Name Ronald L. Branson
Phone No. NONE

Counsel for defendant:
Name Mary E. House
Phone No. _____

Name_____
Phone No. _____

Name Steven D. Manning
Phone No. _____
Name Scott S. Widitor

Optional Form No. 10
(REV.1-80)
(M-11A) 11/88
GSA FPMR(41CFR)101.1.6
5010-114
REFERRAL TO MAGISTRATE
U.S. Government Printing
Office 1985-461-275/20128

ORDER DENYING THE FIRST RULE 59(e) MOTION ON RECOMMENDATION OF MAGISTRATE

ENTERED
CLERK,U.S.DIST.COURT
FEB 23 1989
CENTRAL DIST.OF CALIF.
BY DEPUTY

F I L E D
FEB 17 1989
CLERK,U.S.DIST.COURT
CENTRAL DIST.OF CALIF.
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No. CV 87-3003-WDK(S)
Plaintiff,)
v.) ORDER DENYING PLAINTIFF'S
CITY OF LOS ANGELES) MOTION; RECOMMENDATION
et al.,) OF UNITED STATES
Defendants.) MAGISTRATE
_____)

On February 16, 1988, Plaintiff filed a first amended complaint for damages under 42 U.S.C. section 1983. One of the named defendants, Patricia G. Schwartz, Commissioner of the Los Angeles Municipal Court, filed a motion to dismiss Plaintiff's amended complaint as to said Defendant. The sole ground for the motion was that Defendant Schwartz was protected by the doctrine of judicial immunity.

On September 13, 1988, the Magistrate filed a Report and Recommendation in which it was recommended that the Court enter judgment dismissing the complaint as to Defendant Schwartz, with prejudice. On September 28, 1988, Plaintiff filed extensive objections to the Report and Recommendation. On October 28,

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

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1988, the Magistrate filed a Final Report and Recommendation reaffirming his initial findings and recommendation. On October 28, 1988, the Court filed an order adopting the recommendation of the

Magistrate, and a Judgment dismissing Plaintiff's complaint, with prejudice, as to Defendant Schwartz. On November 10, 1988, Plaintiff filed the present motion to alter, amend, or vacate the judgment, and to set aside the order adopting the Magistrate's recommendation.

Having considered the motion filed by Plaintiff, and all papers filed in support thereof, the Court now makes the following order:

IT IS ORDERED that Plaintiff's motion be denied in its entirety.

Dated: 2/17/89

/s/
WILLIAM D. KELLER
United States District Judge

IT IS SO RECOMMENDED
THIS 13TH DAY OF FEBRUARY, 1989:

/s/
ROBERT M. STONE
United States Magistrate

----------2----------

APPEAL TAKEN ON DENIAL OF FIRST RULE 59(e) MOTION (Cover Page only)
USCA No. 89-55309
[Dismissed as Nonappealable - Published Decision]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case No. 89-55306

RONALD L. BRANSON,
Plaintiff and Appellant

vs.

PATRICIA G. SCHWARTZ, Commissioner of the Los Angeles Municipal Court,
Defendant and Appellee.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable WILLIAM D. KELLER, District Judge
No. CV 87-03003-WDK(S)

BRIEF FOR APPELLANT

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
(No phone)

Plaintiff and Appellant
Pro Se

MAGISTRATE'S RECOMM. RE SECOND JUDGMENT
[Adopted by Judge in its entirety despite plaintiff's Objections]

F I L E D
JAN 4 1990
CLERK,U.S.DIST.COURT
CENTRAL DIST. OF CALIF

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No.
) CV 87-3003-WDK(S)
Plaintiff,)
) S E C O N D
v.) REPORT AND RECOMMENDATION
) OF A UNITED STATES
CITY OF LOS) MAGISTRATE IN A
ANGELES, et al.,) CIVIL RIGHTS CASE
)
Defendants.)
_____)

This Report and Recommendation is submitted to the Honorable William D. Keller, United States District Judge, pursuant to the provisions of 28 U.S.C. section 636(b)(1)(B) and General Order 194 of the United States District Court for the Central District of California.

BACKGROUND

On February 16, 1988, Plaintiff filed a First Amended Complaint for damages under 42 U.S.C. section 1983. Several defendants were named, including: (1) the County of Los Angeles; (2) Sheriff Sherman Block; and (3) Deputy Sheriff James Perez. Plaintiff's complaint is based on an incident which occurred in

---1---

May of 1986, when Plaintiff was arrested by officers of the Los Angeles Police Department (LAPD). Plaintiff remained in custody for several

days pending court proceedings. During a portion of this time, he was placed in the custody of Los Angeles County deputy sheriffs. After appearing in court, Plaintiff was released on bail, and was ultimately tried and convicted of tampering with a motor vehicle.

The above-named Defendants have filed motions for summary judgment. Plaintiff has filed a motion for partial summary judgment against these Defendants on the issue of liability.

DISCUSSION

County of Los Angeles and Sheriff Block

Neither a governmental entity nor an individual may be found liable for a civil rights act violation based on the theory of respondeat superior. Monell v. Department of Social Services, 436 U.S. 658 (1978); Meehan v. County of Los Angeles, 856 F.2d 102, 106 (9th Cir.1988). A local governmental entity may not be held liable for a civil rights violation unless the violation resulted from an official act or policy of the entity, or was in some way sanctioned by the governmental entity. City of St. Louis v. Praprotnik, 485 U.S. 112 (1988); Monell v. Department of Social Services, 436 U.S. 658 (1978).

The allegations of the First Amended Complaint concerning the County of Los Angeles and Sheriff Block may be summarized as follows:

1. The Sheriff and his deputies performed all alleged

acts or omissions in the name of and under the authority of the ordinances, policies and customs of Los Angeles County.

2. Los Angeles County has the power to enact legislation and to adopt policies and practices affecting the operation of the Sheriff's Department, particularly its employment and disciplinary practices, customs and usages.

3. Between May 11 and May 16, 1986, the County and other defendants, acting pursuant to a

policy, custom, or practice, conspired to deprive Plaintiff of his rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

4. Defendant Block is the Sheriff of Los Angeles County, and is charged by law with the supervision, management, control, operation and administration of the Sheriff's Department. Sheriff Block's deputies operate the Los Angeles County Jail system, and Defendant Block has the responsibility for control, supervision, training, employment, assignment and removal of all deputy sheriffs.

5. On May 14, 1986, after the illegal arrest of Plaintiff and during his illegal detention, Plaintiff was brought before a Municipal Court Commissioner who ordered him remanded in violation of his constitutional rights. Based on the Commissioner's order, certain deputies of Sheriff Block received Plaintiff into their custody and ultimately transported him to the Central Jail. Said deputies knew that Plaintiff should have been brought before a magistrate (not a commissioner) but failed to do so. Said deputies maintained custody of Plaintiff for two more days, in violation of his constitutional rights.

----------3----------

6. On May 16, 1986, certain deputies of Sheriff Block brought Plaintiff before a Municipal Court Commissioner, and not before a "magistrate," thereby violating Plaintiff's constitutional and statutory rights.

7. Between May 14 and 16, 1986, while Plaintiff was in the custody of Sheriff's deputies at the behest of the Municipal Court Commissioner, said deputies maliciously subjected Plaintiff to a strip and visual body-cavity search on four separate occasions; said searches were made without any reasonable suspicion or probable cause to believe that Plaintiff was concealing a weapon or contraband; Plaintiff was not charged

with any offense involving weapons, contraband or violence.

8. Defendant Perez and other sheriff's deputies kept Plaintiff imprisoned for a period of six consecutive days before a determination of probable cause was made by any magistrate, in violation of Plaintiff's constitutional rights.

Defendant County of Los Angeles and Sheriff Block contend that Plaintiff has failed to demonstrate the personal involvement of Sheriff Block in the incidents described, or that the alleged actions of deputy sheriffs were done pursuant to County policy, custom or practice. These defendants argue that since the doctrine of respondeat superior does not apply in civil rights cases, summary judgment should be entered in their favor. The arguments made by said Defendants are persuasive, except for one major area: the repeated strip and visual body-cavity searches.

The declarations filed by the parties, as well as the excerpts from discovery responses, demonstrate that Plaintiff was

forced to undergo visual body-cavity searches while in the custody of deputy sheriffs. The sole basis for such searches was apparently the fact that Plaintiff had been arrested on a felony charge. However, this was an insufficient reason. See Kennedy v. LAPD, 887 F.2d 920, 928-934 (9th Cir.1989). Moreover, the undisputed evidence that Plaintiff was subjected to visual body-cavity searches several times while in custody of the Sheriff, is itself evidence of a policy by the County and the Sheriff that all persons at the Central Jail who are charged with felonies be subjected to such searches. Cf. Cabrales v. County of Los Angeles, 864 F.2d 1454, 1460-1461 (9th Cir.1988), vacated 109 S.Ct. 2425 (1989), and reinstated 886 F.2d 235 (9th Cir.1989).

In summary, the Magistrate finds a genuine issue of material fact as to whether or not the

visual body-cavity searches of Plaintiff were made pursuant to County policy and/or the discretion or policy of the Sheriff. The motions for summary judgment filed by these Defendants, as well as by Plaintiff concerning these defendants, should be denied. However, Plaintiff has presented no evidence in support of the other allegations made against these Defendants. Therefore, the motion for summary adjudication on behalf of said Defendants should be granted with regard to all other allegations against them.

Deputy Perez

In order to state a claim under the Civil Rights Act, a plaintiff must allege facts which show the deprivation of a federally protected right by a person acting under color of state law or authority. E.G. Gomez v. Toledo, 446 U.S. 635, 640

(1980). The only allegations of the First Amended Complaint concerning Deputy Perez may be summarized as follows: that while he was imprisoned in the Central Jail on May 16, 1986, Plaintiff told Deputy Perez, a custodial officer, that Plaintiff was being falsely imprisoned and that the persons responsible would be held liable. However, Deputy Perez did nothing to help Plaintiff.

It is undisputed that Defendant Perez is a Deputy Sheriff who is assigned as a custodial officer at the Central Jail. Defendant Perez was not responsible for Plaintiff's arrest, detention, or for any delay in bringing him before a magistrate. The sole evidence presented by Plaintiff against Deputy Perez indicates that Perez did nothing when Plaintiff told him in general terms that Plaintiff was the victim of an unlawful imprisonment. Based on these brief remarks, Deputy Perez was in no position to unilaterally adjudicate the legality of Plaintiff's arrest or pretrial detention. No federal Constitutional

violation by Perez has been shown. Therefore, Defendant Perez is entitled to summary judgment.

RECOMMENDATION

It is recommended that an Order be issued by the Court: (1) approving and adopting this Report and Recommendation; (2) directing that summary judgment be entered for Defendant James Perez; (3) denying Plaintiff's motion for partial summary judgment against Defendants County of Los Angeles, Sheriff Sherman Block and Deputy Sheriff James Perez; (4) denying the motion of Defendants County and Block for summary judgment against Plaintiff; (5) finding that a genuine issue of material

fact exists as to whether or not the visual body-cavity searches of Plaintiff were made pursuant to County policy and/or the direction or policy of Defendant Block; and (6) finding that the following described facts are without substantial controversy pursuant to Rule 56(d) of the Federal Rules of Civil Procedure: except for the issue of body-cavity searches as described above, the acts and/or omissions of which Plaintiff complains were not the direct and proximate result of the official act, policy, practice or usage of Defendant County or of Defendant Block, and they were not sanctioned by said Defendants or either of them.

Dated: January 4, 1990

/s/
ROBERT M. STONE
United States Magistrate

MAGISTRATE'S RECOMM. RE THIRD JUDGMENT
[Adopted by Judge in its entirety despite plaintiff's Objections]

F I L E D
JAN 4 1990
CLERK,U.S.DIST.COURT
CENTRAL DIST. OF CALIF

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No.
) CV 87-3003-WDK(S)
Plaintiff,)
) T H I R D
v.) REPORT AND RECOMMENDATION
) OF A UNITED STATES
CITY OF LOS) MAGISTRATE IN A
ANGELES, et al.,) CIVIL RIGHTS CASE
)
Defendants.)
_____)

This Third Report and Recommendation is submitted to the Honorable William D. Keller, United States District Judge, pursuant to the provisions of 28 U.S.C. section 636(b)(1)(B) and General Order 194 of the United States District Court for the Central District of California.

BACKGROUND

On February 16, 1988, Plaintiff filed a First Amended Complaint for damages under 42 U.S.C. section 1983. Several defendants were named, including Craig Strauch. Plaintiff's complaint is based on an incident which occurred in May of 1986, when Plaintiff was arrested by officers of the Los Angeles Police

----------1----------

Department (LAPD) based on information given to them by Defendant Strauch. Plaintiff remained in custody for several days pending court

proceedings. After appearing in court, Plaintiff was released on bail, and was ultimately tried and convicted of tampering with a motor vehicle.

The above-named Defendant has filed a motion for summary judgment. Plaintiff has filed a motion for partial summary judgment against this Defendant on the issue of liability.

DISCUSSION

It is undisputed that Plaintiff's arrest by LAPD officers was based on information which they received from Defendant Craig Strauch. Strauch was an off-duty CHP officer who reported his observations of Plaintiff as seen through Strauch's window at home. These observations suggested that Plaintiff may have been engaged in attempting to enter a parked automobile which did not belong to him. In connection with the pending motions for summary judgment, Plaintiff has presented no evidence of any further involvement in this matter by Defendant Strauch.

In order to state a claim under the Civil Rights Act, a Plaintiff must allege facts which show the deprivation of a federally protected right by a person acting under color of state law or authority. There is no genuine issue as to the fact that Defendant Strauch merely reported his observations of possible criminal activity on the part of Plaintiff to officers of the LAPD. Such action on the part of Strauch does not constitute the

deprivation of any federally protected right. Therefore, Plaintiff's motion for partial summary judgment against Defendant Strauch should be denied, and the motion for summary judgment by Defendant Strauch should be granted.

RECOMMENDATION

It is recommended that an order be issued by the Court: (1) approving and adopting this Report and Recommendation; (2) denying Plaintiff's motion for partial summary judgment; and (3) ordering that summary judgment be entered in favor of Defendant Strauch.

Dated: January 4, 1990

/s/
ROBERT M. STONE
United States Magistrate

PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S RECOMM. RE SECOND AND THIRD JUDGMENTS (Introductory portion and Topical Index only)

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

Plaintiff, Pro Se

F I L E D
CLERK,U.S.DIST.COURT
JAN 19 1990
CENTRAL DIST.OF CALIF
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON, Plaintiff, vs. CITY OF LOS ANGELES, et al., Defendants.

Case No. CV 87-03003-WDK(S)

PLAINTIFF'S OBJECTIONS TO "SECOND" AND "THIRD" REPORT AND RECOMMENDATION OF MAGISTRATE ROBERT M. STONE; REQUEST FOR CERTIFICATION UNDER RULE 54(b) F.R.Cv.P. AND/OR PURSUANT TO TITLE 28 U.S.C. §1292(b) IN THE EVENT JUDGMENTS ARE UPHELD.

[Rules 72(b); 54(b) F.R.Cv.P.]
[Title 28 U.S.C. §§636(b)(1)(C); 1292(b)]

TO: THE HONORABLE WILLIAM D. KELLER, DISTRICT COURT JUDGE:

Plaintiff RONALD L. BRANSON hereby objects to the "Second" and "Third" Reports and Recommendations of U.S. Magistrate ROBERT M. STONE filed and served by mail upon plaintiff on January 4, 1990. Pursuant to Rule 72(b) Federal Rules of Civil Procedure and Title 28 U.S.C. §636(b)(1)(C), plaintiff, by making these objections, requests that Judge Keller personally make his de novo determination upon the record of, by giving

his fresh and independent consideration to, all matters to which these objections are made, in accordance with his Article III judicial office. (United States v. Raddatz (1980) 447 U.S. 667, 675).

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Plaintiff also requests that in the event the judgments, or either of them, are upheld, that the court certify the judgment(s) for appeal under Rule 54(b) of the Federal Rules of Civil Procedure and/or grant permissive appeal under Title 28 U.S.C. §1292(b) because of the importance of the issue of the district court denying plaintiff a federal remedy in order to resolve authoritatively according to law the violation of his constitutional rights on the merits of his claims in a federal factfinding forum, and the impact it has on this entire case.

Plaintiff addresses both the "Second" and "Third" Reports jointly in these objections unless otherwise indicated.

...

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TOPICAL INDEX

	Page(s)
1. Magistrate Stone has failed to afford plaintiff his federal remedy according to law.	2
(a) Judicial Notice has been ignored.	2
(b) Subject matter jurisdiction not exercised.	15
(c) Right to remedy has been ignored.	28
2. Magistrate Stone has usurped the power of the federal court and has acted in a manner inconsistent with due process of law.	41
County of Los Angeles and Sheriff Block:	
3. Magistrate Stone failed to address plaintiff's motion for partial summary judgment on the issue of Monell liability pertaining to these defendants.	47

4. Magistrate Stone has failed to give a true background of this case. 65
5. Magistrate Stone's summarization of the allegations of the First Amended Complaint are inaccurate and inadequate. 67
(a) The Conspiracy is ignored. 67
(b) The lack of jurisdiction of the Municipal Court is ignored. 69
(c) Number 5 under "Allegations" is false. 70
(d) Number 7 under "Allegations" is false. 75
(e) Number 8 under "Allegations" is misleading. 76
6. Magistrate Stone ignored the imperative release deadline. 77

TOPICAL INDEX (continued)

Page(s)
7. Magistrate Stone did not allow discovery to be completed. 79

Deputy Perez:

8. Magistrate Stone has inaccurately and inadequately stated the allegations concerning Deputy Perez. 81
9. Magistrate Stone has failed to consider the Conspiracy as it affects defendant Perez. 86
10. Magistrate Stone has failed to consider the Harlow doctrine as it relates to defendant Perez. 86
11. Magistrate Stone has failed to consider the Monell doctrine as it relates to defendant Perez. 86
12. Magistrate Stone failed to consider any duty to investigate the validity of plaintiff's incarceration on the part of defendant Perez. 87
13. Magistrate Stone did not allow discovery to be completed. 89

Craig Strauch:

14. Magistrate Stone has failed to give a true background of this case. 90

15. The Third Report and Recommendation pertaining to defendant Strauch is totally nonresponsive to plaintiff's opposition to defendant Strauch's motion and to plaintiff's motion for partial summary judgment. 90

16. Magistrate Stone did not allow discovery to be completed. 91

THE SECOND RULE 59(e) MOTION(Notice/Motion only)
(Challenging the Second and Third Judgments)

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

F I L E D
CLERK,U.S.DIST.COURT
MAR 12 1990
CENTRAL DIST.OF CALIF.

Plaintiff, Pro Se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON) No. CV 87-03003-WDK(S)x
)
) NOTICE OF MOTION AND MOTION
Plaintiff,) TO ALTER OR AMEND, AND
) VACATE AS VOID, "SECOND
) JUDGMENT" AND "THIRD JUDG-
) MENT"; TO VACATE AND SET
) ASIDE THE ORDERS ADOPTING
v.) THE "SECOND" AND "THIRD"
) REPORTS AND RECOMMENDA-
) TIONS OF UNITED STATES
) MAGISTRATE; MEMORANDUM OF
) POINTS & AUTHORITIES AND
CITY OF LOS) DECLARATION IN SUPPORT
ANGELES, et al.,) THEREOF; SPECIFIC REQUEST
) FOR ORAL ARGUMENT BEFORE
) ARTICLE III JUDGE AND FOR
Defendants.) PREPARATION OF WRITTEN
) TRANSCRIPT OF PROCEEDING.
) [Rule 59(e) F.R.Cv.P.]
) Date: April 9, 1990
) Time: 3:00 p.m.
) Place: Courtroom 1600

TO THE HONORABLE WILLIAM D. KELLER,
UNITED STATES DISTRICT JUDGE:
[IT IS PRESUMED THAT JUDGE KELLER IS AN ARTICLE III JUDGE; IF NOT, PLAINTIFF RESPECTFULLY REQUESTS THAT THIS MOTION BE HEARD ON ORAL ARGUMENT BEFORE AN ARTICLE III JUDGE]

PLEASE TAKE NOTICE that on April 9, 1990, at 3:00 p.m. or as soon thereafter as the matter can be heard in the courtroom of U.S. District Judge WILLIAM D. KELLER, Located in Courtroom

----------1----------

1600 of the United States Courthouse, 312 North Spring Street, Los Angeles, California, plaintiff will move the court for an order altering or amending, and vacating as void, its "Second Judgment" and "Third Judgment", both of which were filed January 30, 1990, and entered February 26, 1990; and vacating and setting aside its Orders Adopting the "Second" and "Third" Reports and Recommendations of United States Magistrate, both of which were filed January 30, 1990, on the following grounds:

1. There is no indication or evidence, by a reading of the "Second Judgment" and the "Third Judgment", or either of them, that the District Judge did in fact conduct a de novo determination as required by law, by making an independent thorough analysis of the record in light of plaintiff's objections, or had considered plaintiff's objections whatsoever, before adopting the Magistrate's said recommendations, in violation of Rule 72(b) F.R.Civ.P. and Title 28 U.S.C. §636(b)(1) of the United States Magistrates Act;

2. The "Second" and "Third" Judgments are both void and nullities;

3. The said Judgments reflect the plain usurpation of judicial power and action in a manner inconsistent with due process of law;

4. The said Judgments reflect a failure of the court to establish and act within the federal jurisdiction invoked by plaintiff, in violation of Title 28 U.S.C. §§1331 and 1343(a)(3);

5. The said Judgments reflect the court's failure to afford plaintiff his federal remedy, in violation of Title 42 U.S.C. §1983;

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6. The said Judgments reflect the court's ignoring of:

(a) All judicial notice;
(b) All pending discovery matters;
(c) The pending Proposed Second Amended Complaint;
(d) The conspiracy allegation and its effect on the dismissed defendants;
(e) Principles of Monell liability cited by plaintiff;
(f) Principles of Harlow doctrine cited by plaintiff;
(g) The imperative release deadline cited by plaintiff;
(h) The lack of jurisdiction of the Municipal Court;
(i) The subject matter of defendant STRAUCH's Motion for Summary judgment;
(j) The subject matter of plaintiff's Opposition to defendant STRAUCH's Motion for Summary Judgment;
(k) The subject matter of plaintiff's Motion for Partial Summary Judgment;
(l) The federal question;
(m) The true background of this case;
(n) The true allegations of the First Amended Complaint;
(o) Plaintiff's request for certification under Rule 54(b) and/or Title 28 U.S.C. §1292(b).

7. The said Judgments were made before the completion of discovery was allowed.

SPECIFIC REQUEST FOR ORAL ARGUMENT

PLEASE ALSO TAKE NOTICE that plaintiff hereby specifically requests that oral argument be held on the hearing of this motion before Judge Keller, or an Article III Judge of this Court, and that a reporter's transcript of the proceedings be

prepared for the purpose of (1) clarifying to plaintiff more particularly how the Judgments

reflect his objections and how the court applied its consideration of those objections before making its final decisions; and (2) to set forth on the record a reasoned response to the objections and this motion which will disclose to the parties and to a reviewing court the basis of the decisions.

This motion is based on this notice, the memorandum of points and authorities and plaintiff's declaration attached hereto, the exhibits filed concurrently herewith under separate cover, and on the pleadings, papers, records and files herein, together with such other evidence, both oral and documentary, as may be presented at the oral hearing on this motion.

Dated: March 9, 1990

/s/
RONALD L. BRANSON
Plaintiff, Pro Se

---

* * *

THE LAST ORDER OF THE COURT REGARDING
THE SECOND RULE 59(e) MOTION
[The motion was never rescheduled]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 87-3003-WDK Date April 3, 1990
Title RONALD L. BRANSON v. CITY OF LOS ANGELES et al.
DOCKET ENTRY

PRESENT:
HON. WILLIAM D. KELLER, JUDGE

Sara Tse	None Present
Deputy Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
None Present	None Present

PROCEEDINGS: Plaintiff's motion to vacate the Court's Order Adopting the Magistrate's report and recommendation re second and third judgment, presently set for hearing on April 9, 1990, is continued. The parties are hereby ORDERED to appear for a status conference before Judge Keller, Courtroom 1600, on May 7, 1990 at 4:00 p.m.. All parties are also ORDERED to meet and draft a brief joint status report to be filed no later than April 20, 1990. Plaintiff's motions will be rescheduled by the Court after the status conference.
IT IS SO ORDERED.

cc: Ronald Branson
Zahava Stroud
Carmen Hawkins
Catherine Bernstein

Initials of
Deputy Clerk S.T.

MINUTES FORM 11
CIVIL-GEN D - M

MAGISTRATE'S DENIAL OF MOTION TO FILE SECOND AMENDED COMPLAINT

F I L E D
JAN 5 1990
CLERK,U.S.DIST.COURT
CENTRAL DIST.OF CALIF
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) Civil No.
) CV 87-3003-WDK(S)
Plaintiff,)
) ORDER DENYING MOTION TO
v.) FILE SECOND AMENDED
) COMPLAINT
CITY OF LOS)
ANGELES, et al.,)
)
Defendants.)

On September 6, 1989, Plaintiff filed a "Motion To Amend The First Amended Complaint", and lodged a proposed Second Amended Complaint. The motion was noticed for hearing on October 3, 1989. The Court dispensed with oral argument pursuant to Local Rule 7.11, and deemed the motion submitted as of October 3, 1989.

In support of his motion, Plaintiff states in general terms that he wishes to file a Second Amended Complaint in order to add new defendants whose identities were previously unknown, as well as to add a new cause of action and to add factors which "enhance" existing causes of action. In his moving papers, Plaintiff has failed to specify exactly how the proposed Second Amended Complaint differs from the First Amended Complaint.

----------1----------

The First Amended Complaint was filed on February 16, 1988. It consisted of 29 pages of text

and an additional 3 pages of exhibits. The proposed Second Amended Complaint consists of 59 pages of text plus 9 pages of exhibits. Because Plaintiff has failed to specify the precise differences between the two documents, and has failed to give detailed justification for each such difference, the motion will be denied.

Moreover, the allegations of both complaints concern events which are alleged to have occurred in May of 1986. A one year statute of limitations is applicable to civil rights actions such as the present one. Plaintiff has failed to make a sufficient showing that the "relation back doctrine" should be applied to the new defendants he wishes to name pursuant to Rule 15(c), or that such new defendants should be made parties to the action pursuant to Cabrales v. County of Los Angeles, 864 F.2d 1454, 1462-1464 (9th Cir.1988), vacated on other grounds 109 S.Ct. 2425 (1989), and reinstated 886 F.2d 235 (9th Cir.1989).

IT IS ORDERED: Plaintiff's motion is denied.

Dated: January 5, 1990

/s/
ROBERT M. STONE
United States Magistrate

PLAINTIFF'S OBJECTION TO
MAGISTRATE'S ORDER DENYING MOTION TO FILE
SECOND AMENDED COMPLAINT (Notice/Motion only)
(Rule 72(a) F.R.Cv.P.)
[Misnamed "Motion for Reconsideration"]
[NOTE: This is NOT a Rule 59(e) motion]

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

Plaintiff, Pro Se

F I L E D
CLERK,U.S.DIST.COURT
JAN 22 1990
CENTRAL DIST.OF CALIF
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) No. CV 87-03003-WDK(S)
)
) NOTICE OF MOTION AND
Plaintiff,) MOTION FOR RECONSIDERATION
) OF MAGISTRATE'S "ORDER
) DENYING MOTION TO FILE
vs.) SECOND AMENDED COMPLAINT"
) POINTS AND AUTHORITIES AND
) DECLARATION IN SUPPORT
CITY OF LOS) THEREOF; REQUEST FOR
ANGELES, et al.,) CERTIFICATION UNDER RULE
) 54(b) AND/OR PURSUANT TO
) TITLE 28 U.S.C. §1292(b)
Defendants.) FOR IMMEDIATE APPEAL IF
) ORDER IS UPHELD.
_____) Date: February [26], 1990
Time: 3:00 p.m.
Place: Courtroom 1600

TO ALL DEFENDANTS HEREIN AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February [26], 1990, at 3:00 p.m. o'clock, or as soon thereafter as the matter can be heard, in the courtroom of District Judge WILLIAM D. KELLER, located in Courtroom 1600 of the United States Courthouse, 312 North Spring Street, Los Angeles, California,

plaintiff will move the court for review and reconsideration of the "Order Denying Motion to File Second Amended Complaint" issued by U.S. Magistrate ROBERT M. STONE, filed and served by mail upon plaintiff January 5, 1990.

----------1----------

Plaintiff also requests that in the event the Order is upheld, the Order be certified for immediate appeal under Rule 54(b) Federal Rules of Civil Procedure and/or permissive appeal granted immediately pursuant to Title 28 U.S.C. Section 1292(b) in the interest of preventing any further undue delay in bringing the newly named defendants and the newly alleged cause of action to trial on their merits as soon as possible, within the meaning and spirit of the Federal Rules, and to cause the least amount of prejudice to all parties and counsel herein.

This motion is based upon the ground that the Order is clearly erroneous and contrary to law, in that:

(1) The denial of leave to amend undermines the purpose and policy of the Federal Rules; and

(2) Magistrate Stone did not address, nor base his Order on, the law concerning the statute of limitations.

The motion is based on this notice, the memorandum of points and authorities and declaration attached hereto, the proposed second amended complaint lodged with this court, and on the pleadings, papers, records and files herein, together with such other evidence, both oral and documentary, as may be presented at the hearing on this motion.

Dated: January 22, 1990

/s/_____
RONALD L. BRANSON
Plaintiff, Pro Se

----------2----------

JUDGE'S ORDER RE PLAINTIFF'S OBJECTION TO MAGISTRATE'S ORDER DENYING LEAVE TO FILE SECOND AMENDED COMPLAINT

ENTERED
CLERK,U.S.DIST.COURT
FEB 26, 1990
CENTRAL DIST.OF CALIF
BY DEPUTY

F I L E D
FEB 23 1990
CLERK,U.S.DIST.COURT
CENTRAL DIST.OF CALIF
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON,) No. CV 87-3003 WDK(S)
)
Plaintiff,) ORDER RE MOTION TO
) VACATE OR AMEND
v.) MAGISTRATE'S ORDER
) DENYING LEAVE TO FILE
CITY OF LOS) SECOND AMENDED
ANGELES, et al.,) COMPLAINT
)
Defendants.)

Before the Court is Plaintiff's motion to reconsider Magistrate Stone's Order denying him leave to file a second amended complaint. Such a pretrial ruling by a magistrate is subject to reconsideration on a showing that the order is "clearly erroneous or contrary to law." 28 U.S.C. §636(b)(1)(B). See also McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir.) cert.denied, 455 U.S. 920 (1981). Thus, factual or

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

----------1----------

discretionary rulings are subject to review only for clear error; legal issues are reviewed de novo.

Plaintiff's motion focuses largely on the "relation back" principle in Fed.R.Civ.P. 15(c) and California law. Plaintiff correctly states the law that California's statute of limitations and tolling

provisions for personal injury actions applies to a suit brought under 42 U.S.C. §1983. Cabrales v. County of Los Angeles, 864 F.2d 1454, 1463-64 (9th Cir.1988) vacated on other grounds, ___U.S. ___, 109 S.Ct. 2425 (1989), reinstated, 886 F.2d 235 (9th Cir.1989). The limitations period is one year. Cal. Code Civ.P. §360(3). Further, Cal. Code Civ.P. §474 permits joinder of new defendants and new causes of action within three years of the filing of the original non-time-barred complaint where (1) suit was filed within one year of accrual of the cause of action and (2) the plaintiff was unaware of the identity of certain defendants when it was filed. Lindley v. General Elec. Co., 780 F.2d 797, 800 (9th Cir.) cert.denied ___U.S. ___, 106 S.Ct. 2926 (1986); see also Cal. Code Civ.P. §583.210. This tolling provisions has been read into the substantive law of California to create a quasi four-year limitations period. Lindley, 780 F.2d at 800.

Plaintiff contends, based upon the authority in Lindley, above, that section 474 serves to toll the statute of limitations for three years to permit service on new defendants but that section 474's conditions --specifically the genuine ignorance condition-- does not apply. In Lindley, Judge Norris declined to

"strictly apply" section 474's requirement that the newly served defendants supersede Doe defendants as adherence to that formal requirement would "result in the abridgement of substantive rights under state statutes of limitations." Id., 780 F.2d at 802. 1/ But that decision did not address the requirement that a plaintiff be genuinely unaware of the defendants name; it only focused on the strict rule on replacing Does. Thus, Lindley's disregard for the conditions in section 474 is distinguishable from this case.

As stated in Rumberg v. Weber Aircraft Corp., 424 F.Supp 294, 298 (C.D. Cal.1976), upon which Lindley and Cabrales are founded, a "plaintiff must show that she is factually entitled

to the benefits of California's qualified four-year limitations period." Therefore, plaintiffs invoking the benefits of California's extended quasi four-year limitations period must still meet the factual prerequisites: demonstrating through allegations in the complaint plaintiff's ignorance of the defendant's

---

1/ This conclusion was arrived at despite the fact that it is section 474 that extends plaintiff's substantive right to plead new causes of action and add new defendants under §1983 in the first place. It can hardly be said to constrain those rights when the section is applied in its entirety. Nothing in Wilson v. Garcia, 471 U.S. 261 (1985) suggest that, while looking to state statutes of limitations, we are to adopt only extensions and eschew limitations. Indeed, Wilson says that the courts are to follow state statutes of limitations "and closely related questions of tolling and application." Id. at 269 (emphasis added); see also Id. at n.17 ("'[i]n virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of application'") quoting Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 464 (1975).

The fallback notion that extensions are substantive but limitations are merely procedural, see Rumberg v. Weber Aircraft Corp., 424 F.Supp 294, 298 (C.D. Cal.1976), is a bit strained.

identities at the time of filing. It is not clear from the Magistrate's Order that plaintiff was permitted to show genuine ignorance. This is a legal conclusion which opens the Magistrate's Order to reconsideration by this Court.

Therefore, Plaintiff shall file within twenty days of entry of this Order a declaration under oath attesting to his genuine ignorance of the names of the newly named defendants. The declaration shall be suited to the requirements of

Munoz v. Purdy, 91 Cal.App.3d 942, 947 (1979) which sets for [sic] the standard for genuine ignorance, and be submitted to this Court. Defendants may submit a response to plaintiff's declaration not to exceed ten pages within ten days of filing of plaintiff's declaration. No argument will be heard.

IT IS SO ORDERED.

/s/
William D. Keller, Judge
United States District Court

Dated: 2/22/1990.

JUDGE'S ORDER OF 6/22/90 RE LEAVE TO AMEND

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 87-3003-WDK Date June 22, 1990
Title RONALD L. BRANSON v. CITY OF LOS ANGELES et al.

DOCKET ENTRY

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST-CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE.
DATED 6/25/90
S.T.
DEPUTY CLERK

PRESENT:
HON. WILLIAM D. KELLER, JUDGE

Sara Tse	None Present
Deputy Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANT:
None Present	None Present

PROCEEDINGS:

By order dated February 23, 1990, the Court ordered plaintiff to file a declaration in conformity with the dictates of Munoz v. Purdy, 91 Cal.App. 3d 942, 154 Cal. Rptr. 472 (1979). See Merritt v. County of Los Angeles, 875 F.2d 765, 768 and nn. 5 & 6 (9th Cir.1989). Merritt supports the Court's interpretation of Cabrales v. County of Los Angeles, 864 F.2d 1454 (9th Cir.1988) in footnote one of the February 23, 1990 order.

The February 23, 1990, order required plaintiff to show "genuine ignorance" of the names of the new defendants in conformity with Munoz v.

Purdy, even though the case was filed directly in federal court. See Merritt (same rule in federal filing). Munoz v. Purdy permits adding new defendants, "provided the complaint has not been amended to seek relief on a different theory based on a general set of facts other than those set out in the original complaint." Id., 91 Cal.App.3d at 945, 154 Cal. Rptr. at 474. Plaintiff has in his declaration attested to "genuine ignorance."

Plaintiff is therefore GRANTED LEAVE TO AMEND to add the names of the defendants only. The Complaint shall not be altered in any other way, to expand or modify claims, or allege facts not previously asserted. The amendment therefore works no substantive change in the nature or procedural posture of the litigation.

IT IS SO ORDERED.

/s/

William D. Keller, Judge
United States District Court

Initials of
Deputy Clerk S.T.

MINUTES FORM 11
CIVIL-GEN D - M

* * *

THE THIRD RULE 59(e) MOTION (Notice/Motion only)
(Challenging the Order of 6/22/90)

RONALD L. BRANSON
8643 Kester Avenue
Panorama City CA 91402
No phone

Plaintiff, Pro Se

F I L E D
CLERK,U.S.DIST.COURT
JUL 9 1990
CENTRAL DIST.OF CALIF.
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD L. BRANSON) No. CV 87-03003-WDK(S)x
)
) NOTICE OF MOTION AND MOTION
Plaintiff,) TO ALTER OR AMEND, AND VACATE
) AS VOID, ORDER DATED JUNE 22 ,
) 1990 AFFECTING LEAVE TO
) AMEND THE FIRST AMENDED
) COMPLAINT; REQUEST TO CON-
vs.) SOLIDATE THIS MOTION WITH
) PREVIOUS MOTION TO ALTER OR
) AMEND FILED MARCH 12, 1990
) AND STILL PENDING HEARING;
) MEMORANDUM OF POINTS AND
CITY OF LOS) AUTHORITIES AND DECLARA-
ANGELES, et al.,) TION IN SUPPORT THEREOF.
) [Rule 59(e) F.R.Civ.P.]
) Date: August 6, 1990
Defendants.) Time: 3:00 p.m.
_____) Place: Courtroom 1600

TO THE HONORABLE WILLIAM D. KELLER,
UNITED STATES DISTRICT JUDGE:

[PLAINTIFF RESPECTFULLY REQUESTS THAT THIS MOTION, TOGETHER WITH HIS PREVIOUS MOTION FILED MARCH 12, 1990, AND STILL PENDING HEARING, BE HEARD ON ORAL ARGUMENT, WITH WRITTEN TRANSCRIPTION OF PROCEEDINGS BEFORE AN ARTICLE III JUDGE].

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PLEASE TAKE NOTICE that on August 6, 1990, at 3:00 p.m., or as soon thereafter as the matter can be heard in the courtroom of U.S. District Judge WILLIAM D. KELLER, located in Courtroom 1600 of the United States Courthouse, 312 North Spring Street, Los Angeles, California, plaintiff will move the court for an order altering or amending, and vacating as void, its order dated June 22, 1990, and served on the parties June 25, 1990, limiting leave to amend the first amended complaint "to add the names of defendants only", but not allowing [denying] leave to amend "to expand or modify claims, or allege facts not previously asserted", and hereby requests that this motion to alter or amend be consolidated and heard with plaintiff's previous motion to alter or amend filed March 12, 1990.

This motion and request for consolidation is based on the grounds that the order dated June 22, 1990, and served on the parties on June 25, 1990, pertaining to plaintiff's motion for leave to amend his first amended complaint, was made without first having established the jurisdiction of this court on the record, establishing the federal subject matter on which it is to act in this case, in violation of Title 28 U.S.C. §§1331 and 1343(a)(3); that in the absence of this court establishing federal subject matter jurisdiction on the record herein, said order made on June 22, 1990, and any other action taken by this court disposing of any part of this case is a plain usurpation of judicial power and action in a manner inconsistent with due process of law; that said order of June 22, 1990, made under the above-described circumstances, is void and a nullity; that said order ignores material facts developed as part of the

record in this case, as shown by the two volumes of exhibits accompanying plaintiff's previous motion to alter or amend; and that said order contributes to the failure to afford plaintiff his

federal remedy on the full and true issues and merits of this case, in violation of Title 42 U.S.C. §1983 and the Fifth Amendment to the United States Constitution.

This motion is based on this notice, the memorandum of points and authorities and declaration attached hereto, the previous motion to alter or amend judgments and its attached documents and accompanying exhibits (two volumes) filed March 12, 1990, and on the pleadings, papers, records and files herein, together with such other evidence, both oral and documentary, as may be presented at the hearing on this motion.

Dated: July 9, 1990

/s/
RONALD L. BRANSON
Plaintiff, Pro Se

THE LAST ORDER OF THE COURT REGARDING THE THIRD RULE 59(e) MOTION
[The motion is still pending]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 87-3003-WDK Date 7-31-90
Title RONALD L. BRANSON v. CITY OF LOS ANGELES et al.
DOCKET ENTRY

PRESENT:
HON. WILLIAM D. KELLER, JUDGE

Sara Tse	None Present
Deputy Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANT:
None Present	None Present

PROCEEDINGS: (In Chambers): ORDER TAKING MATTER UNDER SUBMISSION WITHOUT ORAL ARGUMENT.

ON THE COURT'S OWN MOTION, IT IS ORDERED that plaintiff's motion to alter or amend & vacate Order dated 6-22-90, etc. noticed for hearing on 8-6-90, will be taken under submission on that date. No appearance by counsel shall be necessary on that date and the Court will then issue its ruling which will be mailed to counsel when the matter has been decided.

The Clerk shall mail a copy of this Order to counsel.

cc: Ronald Branson
Carmen Hawkins
Zahava Stroud
Catherine Bernstein

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST-CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS ON RECORD IN THIS ACTION ON THIS DATE
DATED 8-1-90
S.T.
DEPUTY CLERK
Initials of Deputy Clerk S.T.

MINUTES FORM 11
CIVIL-GEN

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* * *

PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS & STATUTES

U.S. Constitution:

Fourth Amendment: The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment: No person shall ... be deprived of life, liberty, or property, without due process of law; ...

Fourteenth Amendment: ...[N]or shall any state deprive any person of life, liberty, or property, without due process of law; ...

Federal Statutes:

Title 28 U.S.C. §636(b)(1) (pertinent part): ...A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. ...

Title 28 U.S.C. §1254(1): Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Title 28 U.S.C. §1291 (pertinent part): The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, ... except where a direct review may be had in the Supreme Court. ...

Title 28 U.S.C. §1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 28 U.S.C. §1343(a)(3): (a) The district courts shall have original jurisdiction of any civil action authorizede by law to be commenced by any person: ... (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; ...

Title 28 U.S.C. §1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Title 28 U.S.C. §2106: The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Title 28 U.S.C. §2107 (pertinent part): Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after entry of such judgment, order or decree. ...

Title 28 U.S.C. §2403(a): In any action, suit or proceeding in a court of the United States to which the United States of any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States

shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Title 42 U.S.C. §1983 (pertinent part): Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress....

* * *